

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

August Technology Corporation,  
a Delaware corporation, and  
Rudolph Technologies, Inc., a  
Delaware corporation,

Plaintiffs,

vs.

Camtek, Ltd., a foreign  
corporation,

Defendant.

File No. CV-05-1396  
(MJD/AJB)

Minneapolis, Minnesota  
February 10, 2009  
9:30 a.m.

BEFORE THE HONORABLE MICHAEL J. DAVIS and a Jury  
UNITED STATES DISTRICT COURT JUDGE

(TRIAL - VOLUME VII)

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

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**P R O C E E D I N G S**

**IN OPEN COURT**

**(JURY PRESENT)**

THE COURT: Let's continue.

MR. GRUMBLES: Your Honor, the plaintiffs call  
Mayson Brooks back to the stand to complete his testimony.

THE COURT: Good morning.

THE WITNESS: Good morning, sir.

THE COURT: You are still under oath.

THE WITNESS: Yes, sir.

(Witness previously sworn.)

**(David Mayson Brooks)**

**REDIRECT EXAMINATION**

BY MR. GRUMBLES:

Q. Good morning, Mr. Brooks.

A. Good morning.

Q. I just want -- I've just got a few more questions for  
you.

MR. GRUMBLES: Todd, can you pull up Defendant's  
Exhibit 184, please.

BY MR. GRUMBLES:

Q. Mr. Brooks, you were asked about this document  
yesterday, correct?

A. That's correct.

Q. And, again, what is this document?

1 A. It's an e-mail from R-Ken Huang, one of my Taiwan sales  
2 managers, about some information customers gave him about  
3 development needed for our 3Di inspection system.

4 Q. And I just have a quick question for you. The second  
5 bullet at the top of the e-mail says, "We cannot do 3D  
6 defect detection"?

7 A. That's correct.

8 Q. Can you explain that to the jury. What was the status  
9 of that feature at the time?

10 A. The main purpose of 3D inspection systems is to measure  
11 the height in microns of the solder bumps. In this case  
12 he's saying that some customers are actually wanting to do  
13 probe mark inspection on the solder bumps, something us nor  
14 any of our competitors can really do now. And so we have  
15 had some customers, as he is reporting, that are starting to  
16 ask for this feature.

17 Q. So this was basically just a customer wanting a feature  
18 that didn't really exist in the market at the time?

19 A. That's correct.

20 Q. And that neither you nor Camtek would have had?

21 A. That's correct.

22 MR. GRUMBLES: Todd, can you pull up Defendant's  
23 Exhibit 176, please.

24 BY MR. GRUMBLES:

25 Q. Mr. Brooks, you were asked a question briefly about this

1 document. Again, what is Defendant's Exhibit 176?

2 A. It's a presentation given for sales training in August  
3 2006.

4 MR. GRUMBLES: Todd, can you pull up the page in  
5 this that's 41119.

6 BY MR. GRUMBLES:

7 Q. Explain to the jury, what was the purpose of this sales  
8 team meeting?

9 A. Training on products, but also for the sales team, who  
10 are the eyes and ears from the customer to the headquarters,  
11 of what our customers are telling us we need to do and to  
12 continue to improve in our equipment.

13 Q. And, again, why does it matter what sales team members  
14 think about what customers might need?

15 A. Well, they're the ones in front of the customer on a  
16 daily basis, so we -- part of their job responsibilities is  
17 to give us that feedback.

18 Q. So this is part of August's quality control and the way  
19 to improve products?

20 A. And continued improvement.

21 Q. Yesterday, Mr. Brooks, you were asked about several  
22 documents referring to various inspection companies; is that  
23 correct?

24 A. That's correct.

25 Q. Were many of those documents regarding companies that

1       were operating outside the United States?

2       A.   That's correct.

3       Q.   And were many of them documents related to time periods  
4       prior to 2005?

5       A.   They were.

6       Q.   Aside from the ICOS sale that you discussed to Cree  
7       yesterday, did counsel show you any documents that you  
8       believe are inconsistent with your testimony that the only  
9       two companies competing for finished wafer inspection in the  
10      United States during the time period 2005 to 2008 were  
11      August and Camtek?

12      A.   No.

13      Q.   You were asked about a number of documents in which  
14      August was responding to various customer issues and  
15      concerns?

16      A.   Correct.

17      Q.   Did counsel ask you about any issues yesterday that are  
18      not the kind of issues that companies such as August and  
19      Camtek have to deal with on a daily basis?

20      A.   We deal with them on a daily basis, not just August and  
21      Camtek, but any company supplying equipment to this  
22      industry.

23      Q.   Are you typically able to resolve those kind of issues?

24      A.   Always.

25      Q.   Were any of the issues that you were asked about

1 yesterday, customer concerns, so insurmountable that you  
2 would not have been able to resolve them and make the sales  
3 that were identified?

4 A. Some are short fixes, some are a little longer, but we  
5 always resolve all the issues.

6 Q. If Camtek had not been selling against you with August's  
7 own technology, you would have been able to make those  
8 sales?

9 A. Very much so.

10 MR. GRUMBLES: No further questions, Your Honor.

11 **RECROSS EXAMINATION**

12 BY MS. CHAPLIN:

13 Q. Good morning, sir.

14 A. Good morning.

15 Q. I just have a couple of questions. I'll try to be  
16 brief.

17 Yesterday with Mr. Grumbles you talked about Intel  
18 having high specifications, correct?

19 A. Correct.

20 Q. And IBM certainly has demanding specifications like  
21 Intel, right?

22 A. Similar.

23 Q. And you understand that RVSI's tool is the benchmark for  
24 IBM, right?

25 A. That's correct.

1 Q. Now, you testified that you never saw RVSI competing for  
2 a sale in the U.S. from 2005 forward?

3 A. Correct.

4 Q. Were you aware that Delphi indeed considered the Falcon,  
5 the NSX, and RVSI's machine?

6 A. I don't think so.

7 Q. And were you aware that Texas Instruments also  
8 considered the Falcon, the NSX, and the RVSI machine?

9 A. I don't think so.

10 Q. And yesterday you talked just a little bit about Semicon  
11 West, the trade show?

12 A. Correct.

13 Q. And you talked about it being the biggest trade show for  
14 this industry in the world, right?

15 A. Correct.

16 Q. And that's the trade show that's in the United States,  
17 somewhere in the San Francisco Bay area?

18 A. Correct.

19 Q. And different companies come to show their wares to  
20 potential customers at that show, right?

21 A. Correct.

22 Q. And companies like KLA come and exhibit at the show?

23 A. Correct.

24 Q. And KLA is also located in the United States, correct?

25 A. Correct.



1 Q. And you're certainly aware that ICOS purchased KLA in  
2 2008 -- I'm sorry -- that KLA purchased ICOS in 2008?

3 A. That's correct.

4 Q. And that now ICOS operates as a division of KLA, right?

5 A. That's my understanding.

6 Q. And you're aware that ICOS has a sales and support  
7 office in California, right?

8 A. I know that's where KLA is headquartered, so I would  
9 have to assume they moved into the KLA facility.

10 Q. And ICOS certainly displayed at the Semicon West show in  
11 2008, didn't it?

12 A. I don't recall. I don't go see all the competitors'  
13 booths.

14 Q. Now, you do know that Texas Instruments in Dallas  
15 evaluated an ICOS machine in 2006; isn't that right?

16 A. I have no knowledge of that.

17 Q. Mr. Brooks, I've handed you what is Defendant's  
18 Exhibit 1035 and that is an e-mail that you received on or  
19 about August 25, 2006; isn't that right?

20 A. Correct.

21 MS. CHAPLIN: Your Honor, we move for admission of  
22 Defendant's Exhibit 1035.

23 MR. GRUMBLES: No objection, Your Honor.

24 THE COURT: Be admitted.

25 BY MS. CHAPLIN:

1 Q. Now, Mr. Brooks, this is an e-mail talking about a  
2 meeting that one of your salespeople had --

3 MR. BANNON: The Judge needs to switch over.

4 MS. CHAPLIN: I'm sorry. Could you switch over,  
5 Your Honor, so it can come up on the screen.

6 THE COURT: Sure.

7 MS. CHAPLIN: Thank you.

8 BY MS. CHAPLIN:

9 Q. So, Mr. Brooks, this is an e-mail talking about a  
10 meeting that August Technologies had with Texas Instruments  
11 trying to get their business in 2006, correct?

12 A. Correct.

13 Q. And you received this e-mail, right?

14 A. Yes.

15 Q. And I would like to look on the first page down about  
16 three-quarters of the way down. It says, "TI Dallas people  
17 do not have good things to say about Rudolph's TI account  
18 management, do not call on people enough, no attempt at  
19 building a relationship, do not bother to understand TI's  
20 needs." Right?

21 A. That's what it says.

22 Q. And let's turn to the next page, if you would. I'll  
23 direct your attention to the middle of the page where it  
24 says, "Other Points." The fifth bullet point underneath  
25 that, sir, says, "TI Dallas is evaluating an ICOS." Do you

1 see that?

2 A. I do.

3 Q. And let's look under Action Items of the meeting, the  
4 next section. The first action item for August Technology  
5 was to provide Mary K. at Texas Instruments a Rudolph  
6 Technologies vs. Camtek vs. ICOS comparison; isn't that  
7 right?

8 A. That's what it says.

9 Q. And do you recall that August Technologies was trying to  
10 get business from Fairchild Semiconductor in the United  
11 States in 2006?

12 A. I do.

13 Q. And August was in direct competition with Camtek and  
14 ICOS for that business; isn't that right?

15 A. I don't recall.

16 Q. Now, you talked about Topcon as a foreign competitor,  
17 right?

18 A. Correct.

19 Q. And there came a point in 2006 when you were notified  
20 that one of your salespeople had been contacted by a  
21 distributor who wanted to distribute Topcon products in the  
22 United States, right?

23 A. That's correct.

24 Q. And indeed that distributor was looking for a U.S. sales  
25 manager to represent the Topcon line of inspection systems

1 in the U.S., right?

2 A. Correct.

3 Q. And you were notified that Topcon was going to open  
4 offices in San Jose and Chicago, right?

5 A. I don't recall Chicago. I would certainly assume  
6 San Jose.

7 Q. Now, Mr. Brooks, I've handed you what's been marked as  
8 Defendant's Exhibit 1028. And do you recognize that as an  
9 e-mail that you received, sir, on or about January 7, 2006?

10 A. I do.

11 MS. CHAPLIN: Your Honor, we move for admission of  
12 Defendant's Exhibit 1028.

13 MR. GRUMBLES: No objections.

14 THE COURT: Be admitted.

15 MS. CHAPLIN: Thank you.

16 BY MS. CHAPLIN:

17 Q. And, sir, this is the e-mail that you received about  
18 Topcon calling one of your salespeople, correct?

19 A. Correct.

20 Q. And we've already talked about some of the top of the  
21 e-mail, so I will skip over that. Let's talk about the  
22 third paragraph from the bottom. It says, "He also stated  
23 that Toray is coming to the U.S. market this year as well.  
24 Can't confirm this. He does not rep Toray. Just the rumor  
25 he passed on to me." Correct?

1 A. That's what it says.

2 Q. And let's look at the next paragraph. I'll jump to the  
3 second to the last sentence. It says, "I am guessing that  
4 he was here calling on Cree and Unitive. This is shaping up  
5 to become a very interesting year for the U.S. and for  
6 August from a competitive standpoint in general." Right?

7 A. That's what it says.

8 Q. And let's look at the last paragraph. It states, "We  
9 had better get engineering on board with delivering on all  
10 the enhancements we need. We are looking down the barrel  
11 and we are not as good as our competitors and we will most  
12 certainly experience lots of pricing pressure this year.  
13 Relationships and salesmanship is only going to carry us so  
14 far." Right?

15 A. Correct.

16 Q. And that was written to you by one of your sales force?

17 A. Correct.

18 MS. CHAPLIN: Thank you.

19 THE COURT: Anything further?

20 MR. GRUMBLES: Just a couple questions, Your  
21 Honor.

22 **FURTHER REDIRECT EXAMINATION**

23 BY MR. GRUMBLES:

24 Q. Mr. Brooks, to your knowledge, did RVSI sell any  
25 products in the United States during the time period 2005 to

1 2008?

2 A. None to my knowledge.

3 Q. And aside from the Cree sale by ICOS that you've already  
4 testified about, to your knowledge has ICOS ever been  
5 successful at convincing anybody else in the U.S. to buy any  
6 of its products?

7 A. None to my knowledge.

8 Q. Let me ask you some questions about your relationship  
9 with TI. How would you describe that relationship right  
10 now?

11 A. Ongoing customer. They have a lot of our tools. They  
12 have a lot of Camtek tools.

13 Q. Have any of the things they've asked you about in  
14 connection with TI not been resolved?

15 A. None that I know of.

16 Q. They asked you about Topcon and Toray and the sales --  
17 your salesperson's concern that perhaps Topcon and Toray  
18 were coming to the United States. Did that ever happen?

19 A. No. I know they were evaluating U.S. market, as Todd  
20 reported. I also know they never came to the U.S. market.

21 MR. GRUMBLES: No further questions.

22 THE COURT: You may step down, sir.

23 Call your next witness, please.

24 MR. GRUMBLES: Your Honor, the plaintiffs call  
25 Frances McCloskey.

1 (Witness sworn.)

2 MR. GRUMBLES: Your Honor, may I provide the  
3 witness a copy of the exhibits?

4 THE COURT: Would you state your true and correct  
5 name for the record, please.

6 THE WITNESS: Yes. My name is Frances Mehen,  
7 middle name is spelled M-e-h-e-n, McCloskey, spelled  
8 M-c-C-l-o-s-k-e-y.

9 THE COURT: You may inquire.

10 (Frances McCloskey)

11 DIRECT EXAMINATION

12 BY MR. GRUMBLES:

13 Q. Good morning, Ms. McCloskey.

14 A. Good morning.

15 Q. Where do you live?

16 A. I live and work in Minneapolis, Minnesota.

17 Q. And what is your profession?

18 A. I'm an accountant.

19 Q. And who do you work with?

20 A. I work with a firm called Financial Advisors and our  
21 office is in downtown Minneapolis.

22 Q. And why are you here today?

23 A. I'm here today because I was asked to give an opinion  
24 about the damages that August suffered as a result of the  
25 patent infringement by Camtek.

1 Q. And have you formed an opinion as to the damage August  
2 suffered in this matter?

3 A. Yes, I have.

4 Q. What is that?

5 A. That August is entitled to lost profits as a result of  
6 the infringing sales of the Camtek Falcon system.

7 Q. Very good. We'll talk more about that.

8 You mentioned that you live in Minneapolis. How  
9 long have you lived in Minnesota?

10 A. I've lived in Minnesota for 25 years.

11 Q. Are you married?

12 A. Yes.

13 Q. And any kids?

14 A. I have two children, a daughter and a son.

15 Q. Ms. McCloskey, did you attend college?

16 A. Yes, I did. I went to Middlebury College in Vermont.

17 Q. And what year did you graduate?

18 A. 1984.

19 Q. What was your degree in?

20 A. I have a bachelor's in economics and a minor in Spanish.

21 Q. Did you attend any schooling after college?

22 A. Yes. I went to the University of Minnesota and I got a  
23 master's in business administration in 1989.

24 Q. Any particular concentration?

25 A. I had a focus in marketing with coursework in both



1 finance and marketing.

2 Q. Excellent. Any professional training after your MBA?

3 A. Well, I'm a certified public accountant and so I have  
4 continuing education requirements where every year I have to  
5 take a certain number of classes in order to keep up my  
6 certificate.

7 Q. And you passed the CPA exam?

8 A. Yes, I did. I took the CPA exam in 2002 and I passed it  
9 on the first attempt.

10 Q. Is that difficult to do?

11 A. Some say that it is, yes.

12 Q. What is a CPA?

13 A. Well, a certified public accountant has a license from  
14 the state in which you practice and you perform different  
15 kinds of services. You might review financial statements  
16 for a company and provide an opinion about an audit. You  
17 might look at a person's individual financial information  
18 and prepare a tax return. And then in this particular  
19 circumstance I reviewed and analyzed information and I'm  
20 giving an opinion as to damages in this lawsuit.

21 Q. Is what you are doing in this case sometimes referred to  
22 as forensic analysis?

23 A. Yes, forensic analysis or forensic accounting. It's a  
24 branch of accounting.

25 Q. Have you ever done fraud investigations?

1 A. Yes, I've done a number of fraud investigations.

2 Q. What does that entail?

3 A. Well, it entails looking at the books and records or the  
4 accounting information from a company and then trying to  
5 determine if fraud has occurred or a theft has occurred and  
6 then providing an opinion about what I've seen and how that  
7 is all laid out, for the court usually.

8 Q. With regard to financial forensics, are there any kinds  
9 of certifications that are available for that?

10 A. Yes. The governing body of accountants, which is called  
11 the American Institute of Certified Public Accountants, they  
12 also have a certification in addition to a certified public  
13 accountant and it's called a -- you are certified in  
14 financial forensics.

15 Q. And, again, what is financial forensics?

16 A. It's the performance of accounting and financial  
17 analysis in a legal context. The term "forensic" means in a  
18 legal case or a legal context.

19 Q. So that would be like there's forensic medicine?

20 A. Right. So like, you know, in the old -- I'll date  
21 myself. In the old days there was Quincy, the forensic  
22 scientist, that looked at and performed autopsies, I guess,  
23 on people to try to help solve a crime.

24 Q. So forensic accountants are accountants who come into  
25 legal proceedings in a similar fashion to do analysis?

1 A. Exactly.

2 Q. Are you a member of any professional organizations  
3 besides the -- I think you said the American Institute of  
4 CPAs?

5 A. Yes. I'm also a member of the Minnesota Society of  
6 CPAs, which is our state chapter.

7 Q. Have you ever written any articles or publications in  
8 the area of accounting or damages?

9 A. Yes. I've written several papers on the calculation of  
10 patent infringement damages and I presented those papers at  
11 Minnesota continuing legal education classes for the  
12 Minnesota State Bar Association.

13 Q. Do you have any teaching experience in the area of  
14 accounting or damages?

15 A. Yes. I frequently teach classes to the Minnesota State  
16 Bar Association and other continuing legal education  
17 organizations. So I teach damages to lawyers, basically.

18 Q. Are lawyers easy to teach?

19 A. Some of them.

20 Q. Let's talk about your work after college. Where did you  
21 work after college?

22 A. Immediately after college I worked at General Mills,  
23 they are located in Golden Valley, Minnesota, and I was a  
24 financial analyst and an accountant for them.

25 Q. For how long, approximately?

1 A. I was there for four years, from 1984 to 1988.

2 Q. Okay. Then what did you do after you left General  
3 Mills?

4 A. After General Mills, then I went into an accounting  
5 field and I worked for an accounting firm that's now called  
6 Price Waterhouse Coopers and at the time that I worked there  
7 it was called Coopers & Lybrand and I worked in their  
8 Minneapolis office.

9 Q. What were your job responsibilities when you were at  
10 Price Waterhouse?

11 A. I worked on a number of different kinds of projects, but  
12 I was in an area that did primarily fraud investigation and  
13 forensic accounting and then I also did a few other things,  
14 like feasibility studies for convention centers and sports  
15 stadiums.

16 Q. Does that involve any sports stadiums here in town?

17 A. Yes. We looked at building the new Mariucci Arena at  
18 the University of Minnesota. We looked at building the new  
19 County Stadium in Milwaukee. And the group that I worked  
20 for had done the financial feasibility study for the  
21 Metrodome. That was kind of the type of work that we did.

22 Q. Excellent. How long were you at Price Waterhouse?

23 A. I was there for eight years, from 1989 to 1997.

24 Q. And, again, you said you were at a company called  
25 Financial Advisors?

1 A. That's right. When I left Coopers & Lybrand, which is  
2 now called Price Waterhouse Coopers, I started a firm with  
3 another person that I worked with at Coopers & Lybrand and  
4 that happened in 1997. So we went off on our own and  
5 started a firm that did this kind of financial analysis or  
6 forensic accounting.

7 Q. Does Financial Advisors do any other work besides  
8 forensic accounting?

9 A. Yes, we do. We do valuations and then we also do  
10 analysis of the feasibility of buying and selling companies  
11 for small business owners and -- primarily, though, our work  
12 relates to forensic accounting and the calculation of  
13 damages.

14 Q. You mentioned valuations. What is valuations?

15 A. A valuation is performed to determine the value of a  
16 company usually. So you look at the financial information  
17 about a company and you look at its future prospects and  
18 then you perform a calculation of what that company could be  
19 bought or sold for. It's usually done in the context of a  
20 transaction where someone wants to buy or sell a company.

21 Q. Is this your first time to serve as an expert in a case?

22 A. No.

23 Q. How many times have you served as an expert before?

24 A. Well, I've testified in court about two dozen times,  
25 about 24, 25 times, but I've been hired as an expert many

1 times, probably over several hundred times, but not many of  
2 the cases go to trial.

3 Q. So you have significant experience, then, in doing  
4 forensic accounting?

5 A. Yes.

6 Q. And then presenting that in court?

7 A. Yes. I've been doing it since 1989 basically, so that's  
8 20 years.

9 Q. What kinds of cases have you done forensic accounting  
10 in?

11 A. Well, many types of cases. In this case we're a patent  
12 infringement matter. I've also done damage calculations in  
13 the theft of trade secret cases, in failed merger and  
14 acquisition situations, in breaches of contract, in  
15 employment cases where someone has been wrongfully  
16 terminated from their job, and a variety of other kinds of  
17 cases. Those would be some examples. I could go on and on.

18 Q. Have you worked for both plaintiffs and defendants in  
19 cases?

20 A. Yes, I have.

21 Q. What have you been asked to do specifically in  
22 connection with this matter?

23 A. I was asked to analyze all the financial information and  
24 then other relevant information to the damages and prepare  
25 an opinion of what I believed the damages were that August

1       suffered as a result of the alleged infringement of the  
2       Camtek Falcon system.

3       Q.   And, again, have you reached an opinion as to the  
4       damages August suffered as a result of Camtek's  
5       infringement?

6       A.   Yes.

7       Q.   Have you put together any slides to assist the jury with  
8       following your testimony today?

9       A.   Yes, I have.   We could show the first slide.   It's my  
10      opinion that the fair compensation to August is \$11,627,020  
11      as a result of Camtek's infringement during the period 2005  
12      to 2008.

13      Q.   Let's talk about your process to reach that opinion.   In  
14      connection with your analysis in this case, did you look at  
15      any information or documents?

16      A.   Yes, I looked at quite a few documents and information.  
17      At my office I have about eight boxes full of pieces of  
18      paper, many of which were produced by Camtek and August.

19                I read a number of depositions that were taken in  
20      this case.   I spoke with a number of people at August,  
21      including people in their finance area, their marketing  
22      people, their salespeople, their manufacturing people, and  
23      the technical people or the inventor of the patent, patented  
24      invention.

25                Then I also did some of my own research and I

1 reviewed marketing material and other kinds of information  
2 that was available from both August and Camtek.

3 Q. Did you review the patent in this case?

4 A. Yes, I did.

5 Q. Are you an expert in patent law?

6 A. No. I read it as an accountant, so I read it as a way  
7 to understand what was being claimed here. However, I have  
8 no expertise in the technical aspects of patents.

9 Q. Have you ever seen August's -- any of August's machines  
10 in operation, inspection machines?

11 A. Yes, I did go and visit August's facility in  
12 Bloomington, Minnesota, it's located down on 494, and I  
13 watched an NSX machine inspect a silicon wafer; and that was  
14 very interesting, to see it actually in operation.

15 Q. Are there any other types of, generally that you can  
16 recall, other types of info or documents that you reviewed?

17 A. Well, whenever I do a project like this, I always make  
18 sure that I'm up to date on the latest methods for  
19 calculating damages. So I used different professional  
20 articles and information that's available to me.

21 But primarily I looked at financial information  
22 and marketing information and I looked at all the e-mails  
23 and the other kind of information that was -- you know,  
24 we've seen in the last couple days.

25 MR. GRUMBLES: Your Honor, I am going to move the



1 admission of a list of exhibits -- it's a little bit  
2 lengthy, but I will just read them in -- in connection with  
3 Ms. McCloskey's testimony. The following exhibits:  
4 Plaintiffs' Exhibit 107, 110, 123, 126, 127, 128, 129,  
5 Plaintiffs' 131, 132, 134, 135, 136, 168, 180, 194, 240,  
6 245, 246, 247, 248, 260, 278, 272, 275, 285, Plaintiffs'  
7 290, 291, 293, 469, 471, 475, 476, 586 through 588, 619,  
8 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631,  
9 632, 633, 634, 635, 636, and 637.

10 MS. CHAPLIN: May I have just one moment, Your  
11 Honor?

12 (Pause.)

13 MS. CHAPLIN: Your Honor, we have one objection on  
14 180 on 403 grounds.

15 MR. GRUMBLES: Can you state what those are?

16 MS. CHAPLIN: I believe we should be heard at  
17 sidebar on that, Your Honor, just briefly.

18 THE COURT: Okay. Sidebar.

19 **(At sidebar.)**

20 MS. CHAPLIN: This is the exhibit. It's our SEC  
21 filing. Our only objection is there's one paragraph that  
22 talks about a patent infringement lawsuit brought by another  
23 company against Camtek. And if that was redacted, then we  
24 would have no objection. I have to find it. I'm sorry.

25 MR. GRUMBLES: No objection to that redaction.

1 THE COURT: There's no objection to the redaction.  
2 Let's make sure that we know what it is so we're not arguing  
3 about it at the end of the trial.

4 MS. CHAPLIN: Yes.

5 MR. BANNON: This reference is to a lawsuit  
6 against Orbotech, Your Honor, and it's sort of normal  
7 language that appears in this type of document and we would  
8 just like that to be redacted.

9 MR. GRUMBLES: No objection.

10 THE COURT: Those two paragraphs -- that's the  
11 only two paragraphs that you are concerned about?

12 MS. CHAPLIN: I'm trying to see if this one refers  
13 back up. I think those are the only two, yes, Your Honor.

14 THE COURT: Those are the two paragraphs that will  
15 be redacted. Please review the document again to make sure  
16 that there isn't anything else in it that talks about any  
17 other types of lawsuits and then we can address those  
18 issues -- those paragraphs later to make sure that there's  
19 no objection from the plaintiff. All right?

20 MS. CHAPLIN: Thank you, Your Honor. We  
21 appreciate that.

22 **(In open court.)**

23 MR. GRUMBLES: Just to be clear for the record,  
24 Your Honor, we move for the admission of the foregoing long  
25 list of documents that I just referred to.

1 THE COURT: Be admitted with the redaction in  
2 Exhibit Number --

3 MR. BANNON: It's 180.

4 MR. GRUMBLES: 180, Your Honor.

5 THE COURT: -- 180.

6 BY MR. GRUMBLES:

7 Q. Ms. McCloskey, let's talk about your opinions in this  
8 matter. Let me ask you first generally, what are the types  
9 of money remedies that you can get for patent infringement?

10 A. There are two types of damages that are available to  
11 plaintiffs in a patent infringement case. The first type is  
12 called lost profits and effectively lost profits are the  
13 profits that the patent owner would have made if there had  
14 been no infringement. So in this situation, it's the  
15 profits that August would have made if Camtek had not sold  
16 the infringing Falcon systems.

17 Q. Is there another type of damages available in patent  
18 cases?

19 A. Yes, there's a second type of damages available and  
20 that's called a reasonable royalty and that is the minimum  
21 amount of damages that could be awarded. A reasonable  
22 royalty is effectively like a fee or a rent that's paid to  
23 have the right to use the patented invention. Now, in this  
24 case it's my opinion that lost profits is the appropriate  
25 measure of damages.

1 Q. Can you get both types of damages in a case?

2 A. Well, you have to look at the specific instances of  
3 infringement, so each system that was sold, and you have to  
4 decide could August have made that sale; and if August could  
5 have made that sale, they would get lost profits on that  
6 sale. If August could not have made that sale, then they  
7 would be entitled at a minimum to a reasonable royalty.

8 So you could potentially in the end have both  
9 kinds of damages in the award, but each individual sale  
10 would be looked at to determine is it appropriate to give  
11 lost profits because August could have made that sale or, in  
12 the alternative, then you would fall back to the minimum  
13 reasonable royalty.

14 Q. And, again, have you reached an opinion as to which of  
15 those two measures of damages are appropriate in this case?

16 A. Yes. It's my opinion that August could have made every  
17 single one of the sales that Camtek made of its Falcon tool  
18 in the United States in the period 2005 to 2008.

19 And so it's also my opinion that reasonable  
20 royalty is not really necessary in this situation because  
21 August would have made the sale and would be entitled to its  
22 lost profits, so there's no reason to fall back to the  
23 royalty.

24 Q. How did you reach that conclusion and determine lost  
25 profits in this case?

1 A. Well, there's an ultimate question that has to be  
2 answered in order to decide if lost profits is appropriate  
3 and that question is what profits could the patentholder  
4 have made if there had been no infringement.

5 And so you can go about demonstrating that in  
6 several different ways. One of the ways that you could look  
7 at it is that you would look at each sale and you would  
8 decide could August have made this sale. If they could,  
9 then what is the profit that they would have made and you  
10 add those all up.

11 There are -- there is a way that I have gone about  
12 calculating -- well, I guess, describing this that I can go  
13 through for the jury so that they can follow along with this  
14 method.

15 Q. Proceed.

16 A. We want to switch to the next slide. So there are four  
17 factors that you can consider when you're looking at lost  
18 profits and whether the plaintiff should receive lost  
19 profits.

20 The first is was there customer demand for the  
21 patented product. That means did customers want a product  
22 that had the benefits of the patented invention. And the  
23 products in this situation are the Falcon product and the  
24 NSX and the 3Di. Those are the products were sold with the  
25 patented invention in them and so we would look to see did

1 customers want those products.

2 Second would be were there acceptable alternatives  
3 that were not subject to the patent and what did  
4 customers -- were customers willing to accept and buy  
5 products that did not have the patented invention in it.

6 Third, did the patent owner, in this case August,  
7 have the ability to make the sales, meaning could they  
8 have -- did they have all the selling capability and all the  
9 relationships that they needed to make the sales and could  
10 they have actually built them, you know, or manufactured the  
11 systems assuming that a Falcon wasn't able to be sold.

12 And then the fourth factor is really what's the  
13 appropriate amount. It's the calculation of the lost  
14 profits themselves.

15 So we'll walk through each of these factors.

16 Q. Turning to that first factor that you mentioned,  
17 customer demand, have you come to a conclusion as to whether  
18 there was any demand for the patented technology?

19 A. Yes, I have. There are several things to think about  
20 here. We've heard Mr. Brooks testify that there were quite  
21 a few sales of the August NSX and 3Di systems. There were  
22 over 100 million dollars' worth of those products sold and  
23 in the period of time that we're talking about, 2005 to  
24 2008, there were 54 products sold. And, in fact, August has  
25 sold those systems all over the world.

1           So if you could show the first bullet on the  
2           slide. So August has sold 100 million dollars' worth of  
3           inspection systems in the U.S. and over 400 million  
4           worldwide. Now, these are the patented systems.

5           Q. Did you consider the importance of the technology  
6           itself?

7           A. Absolutely. I mean, the invention has to do with  
8           creating a fast-moving inspection using a fast light and a  
9           continuous motion, at least that's my understanding of it as  
10          an accountant. I'm not a technical person. But that  
11          provided significantly better throughput or speed for the  
12          customers.

13                 And so if a customer bought an August system or a  
14          Falcon system, it was going to be able to get better  
15          throughput; and there are a lot of documents that talk about  
16          how throughput was very important. If you look at the  
17          customer quotations that were provided by August and by  
18          Camtek, they were always promoting faster throughput; and  
19          that was provided as a result of the patented invention.

20          Q. What are some of the materials, again, that you looked  
21          at? You mentioned quotes. Any other materials that you  
22          considered?

23          A. The marketing materials, like the brochures, the  
24          leave-behind materials that they would give to customers,  
25          the specification sheets, the invoices, the information that

1 talked in any way about the attributes of the products, of  
2 these inspection systems, would always promote throughput  
3 and speed.

4 I also looked at depositions and heard the  
5 testimony of Mr. Brooks and listened to some of the  
6 depositions that were read in, as well as I read deposition  
7 testimony of many people that were taken in this case.

8 Q. Did Camtek itself ever talk about the importance of the  
9 Falcon product to its company?

10 A. Yes. Well, Camtek had quite a bit of success in sales  
11 of the Falcon. If you can show the second bullet. Camtek  
12 sold at least 23 million dollars of inspection systems in  
13 the U.S. and millions of dollars more worldwide. Their own  
14 website said that they sold 150 Falcon systems worldwide.  
15 That was still on their website as of this past weekend.

16 And then in many of their investor materials and  
17 financial statements they alluded -- they discussed the fact  
18 that the Falcon system was very significant to their  
19 company.

20 In 2004 they stated -- if you would just show the  
21 box on the slide -- "Our strategy for growth is now the  
22 Falcon. We believe this is the single most important growth  
23 engine for the company and so far we have seen significant  
24 success from this product."

25 And then the second quote actually came from early



1 2005, a first quarter investor press release. "The Falcon's  
2 very positive market acceptance confirms our assessment that  
3 it is becoming a significant growth engine for us."

4 So they themselves, Camtek, are describing the  
5 fact that there was significant market acceptance for the  
6 Falcon machine.

7 Q. And significant success itself, sales success?

8 A. Absolutely. Both August and Camtek had significant  
9 sales success. And one of the key ways to show that  
10 customers wanted the patented product is that they were  
11 sold.

12 And in this situation we heard Mr. Brooks testify  
13 that the customers in the U.S. that wanted an inspection  
14 system in the back end or in this finished wafer inspection  
15 pretty much only considered Camtek and August once they made  
16 their final purchase decision because only Camtek and August  
17 made sales, really, in the United States during that period  
18 of time. We don't really have evidence of anyone else  
19 making sales, and that alone is evidence that the patented  
20 products were widely demanded.

21 Q. Before we turn to the next factor, I just had a question  
22 for you. Did you make any critical assumptions in this case  
23 in connection with your opinion?

24 A. Yes.

25 Q. What are those?

1 A. Well, first I had to assume that the patent is valid and  
2 that it's enforceable. And then second I had to assume that  
3 the Falcon infringed the patent. Those are fundamental  
4 assumptions.

5 Q. What was the next factor that you considered in  
6 connection with your lost profits calculation?

7 A. The second factor is whether there were acceptable  
8 alternatives. And in order to determine if there are  
9 acceptable alternatives, you have to understand the context  
10 in which the products are sold.

11 So first of all you look at the marketplace in  
12 which Camtek and August were competing, and Camtek and  
13 August competed head to head in what in trial has been  
14 called the finished wafer inspection market. Now, some  
15 people also refer to that as back-end inspection. So those  
16 two terms are synonymous.

17 Q. What is a market -- when you say "a market," what do you  
18 mean by that?

19 A. Well, it's where buyers and sellers come together to  
20 create a marketplace where things are exchanged, a product  
21 is purchased and exchanged for money. That's a market.

22 Q. Were you focusing on the world market overall or were  
23 you focusing on the United States market?

24 A. Only on the United States. The patent is enforceable in  
25 the United States, so we're talking about products or

1 systems that were sold in the United States.

2 Q. Was there any time period limitation with regard to the  
3 market that you looked at?

4 A. Yes. I only looked at the time period 2005 to 2008  
5 because that is the period of time that has been established  
6 as appropriate to calculate damages.

7 Q. What was the next step that you did in evaluating --  
8 after you determined what was the relevant market?

9 A. The second is we would look at what did the customers  
10 need; and that included this idea of throughput, they needed  
11 fast -- a fast system and they wanted it to be accurate  
12 inspection. Obviously why inspect unless it's not -- if  
13 it's not accurate, there's no point to it. And then third,  
14 they needed it to be flexible because there were a lot of  
15 different kinds of applications. And we heard Mr. Brooks  
16 talk at length about the importance of accuracy, speed, and  
17 flexibility.

18 Second of all, customers needed product support or  
19 service because this is a very complicated machine. I went  
20 to August to look at the machine and watch it in action  
21 because it's very complex and it's large, it's the size of  
22 like three refrigerators, and it's got a lot of technology  
23 involved in it both as it relates to the physical aspects of  
24 the technology as well as the software. And so it's  
25 complicated and the customers need a lot of help to get

1 started in operating it and get trained up on it, and  
2 Mr. Brooks talked at length about that and the importance of  
3 that to customers.

4 And then thirdly we would look at who were the  
5 competitors, who were offering products and were those  
6 products acceptable. So it's my understanding, based on  
7 everything that I've seen, including documents that might  
8 say that there were other companies trying to compete here,  
9 but, in fact, only August and Camtek, which were providing  
10 products that practiced the patent, were successful in  
11 selling in the United States. So there were no other  
12 acceptable alternatives. The other -- ICOS and RVSI and  
13 other companies were not successful because their products  
14 were not doing everything that the customer needed.

15 Q. Let's talk about that briefly. What did you do to  
16 determine the existence of acceptable substitutes?

17 A. As far as it related to the other companies that were  
18 offering products?

19 Q. Correct.

20 A. Well, first of all you'd look at who all was mentioned  
21 as a possible company that was offering an inspection  
22 product, did they make any sales, was their product  
23 considered seriously by the customers, and then ultimately  
24 what made the difference in the sale, what was purchased.  
25 So first -- and were they offering everything that the

1 customer wanted.

2 So first of all I looked at -- if we can phase in  
3 the first line there. We know that August was offering the  
4 NSX and the 3Di machines. They had a significant support  
5 structure in the U.S. with customer service and training and  
6 very hands-on support. They made 54 system sales in the  
7 period of time that we're talking about and customers  
8 obviously felt that this was an acceptable product. It was  
9 used exclusively at some customers.

10 Second of all, Camtek, which also -- which sells  
11 the Falcon system in the U.S., they had a U.S. support  
12 system. They provided on-site technicians just like August  
13 did. They made sales -- 36 sales of systems and their  
14 product was considered acceptable by customers.

15 And then we've also heard about some other  
16 companies. We've heard about ICOS. Based on what I've seen  
17 and what Mr. Brooks testified to, ICOS was not really a  
18 presence in the United States other than at the company  
19 called Cree they made a sale and that was a specialized  
20 installation. But other than that sale, they've made no  
21 other sales. Whether they've been considered or whether  
22 they tried to make a sale, they never made another sale and  
23 so therefore there must have been something about their  
24 product that was not acceptable. And as far as we know,  
25 Mr. Brooks said that he didn't believe that ICOS had the

1 patented invention.

2 Next we heard about RVSI. RVSI was struggling as  
3 a company. They financially were having some difficulties  
4 and there were concerns on the part of customers and others  
5 in the marketplace that they were not long -- would not be  
6 able to provide long-term support. They did not make any  
7 sales in the 2005 to 2008 time frame in the United States  
8 and so there was something about the RVSI product that was  
9 not acceptable. We heard Mr. Brooks state that RVSI was  
10 purchased by August in the last few years. They purchased  
11 it because of their 3D technology, but their two-dimensional  
12 inspection technology was not as well developed, I think he  
13 said, so there was something that was not acceptable about  
14 it.

15 And then thirdly we heard about Solvision. They  
16 were a Canadian company. They did not have a real presence  
17 in the United States, they didn't make any sales in the  
18 United States, and Solvision has eventually gone out of  
19 business and their systems were not acceptable to U.S.  
20 customers either.

21 So it's my conclusion that there were no other  
22 acceptable alternatives in the marketplace.

23 Q. And market acceptance is part of your analysis in  
24 determining the acceptability of an alternative?

25 A. Well, market acceptance, yes. If nobody is buying these

1 other companies' systems, then there's something about them  
2 that they don't want. They want the systems from August and  
3 Camtek. And the differentiating factor there is the speed  
4 of the two-dimensional inspection, which is enabled by the  
5 patented invention.

6 Q. What was the next step that you undertook in your lost  
7 profits analysis?

8 A. The third factor that we talked about already is did  
9 August have the ability to make the sales.

10 And so first let's look at each of the customers  
11 that bought Falcon systems. There were 12 customers in the  
12 United States that bought Falcon systems, so there were --  
13 as I mentioned before, there were 36 systems sold for a  
14 total of -- let's see. Camtek took in sales revenue of  
15 \$22,894,110 as a result of selling those 36 systems and  
16 these are the systems that were sold in the U.S. from 2005  
17 to 2008.

18 Now, it's important to note that -- and if you  
19 would advance the slide. As I said, there were 12 -- did I  
20 count that correctly? There were 12 customers that bought  
21 Falcon systems. Nine of them were August customers, August  
22 had NSX or 3Di systems installed at nine of these customers.

23 And then with Allegro, in the sale to Allegro only  
24 August and Camtek were competing and I base that on  
25 documents that I reviewed that were produced by August and

1 Camtek. And August lost that sale because of price and  
2 Camtek came in with a low price. Otherwise, August would  
3 have made that sale.

4 If we look at Cypress, Cypress's sale was proposed  
5 by August and Camtek only, there were no other competitors  
6 in that sale. And August lost the sale because of speed,  
7 but that speed was achieved through use of the patented  
8 technology.

9 And then third, at Peregrine only August and  
10 Camtek competed for that sale.

11 So every single one of these situations were  
12 situations where August was the provider of inspection  
13 systems already, where they had the systems installed and  
14 they were servicing them and they were calling on them  
15 routinely and they were proposing for this business. And  
16 we've already heard from both Mr. Brooks and from the  
17 deposition that was read in from Mr. Weiss, that being the  
18 incumbent provider is a significant advantage.

19 Q. What does that mean, "incumbent"?

20 A. That means that you are the party whose systems are  
21 already in place at that customer. So that customer is  
22 already familiar with your system and has used your system  
23 and is comfortable and trained on those systems.

24 And then, as I said, nine of the customers were  
25 already August customers and had August systems and then the



1 three specific ones, Allegro, Cypress, and Peregrine, were  
2 competitive situations where only August and Camtek were  
3 bidding for those opportunities. So August had the capacity  
4 to make the sales. They had relationships with all of these  
5 parties.

6 So if we could move to the next slide. So as it  
7 relates to marketing capacity, August could have made every  
8 single one of those sales and would have if Camtek had not  
9 been selling the Falcon system.

10 But remember that I also said that you also have  
11 to look at the manufacturing, did August have the ability to  
12 actually build these systems. There were 36 of them. We  
13 heard Mr. Brooks talk about production capacity at August  
14 and he stated that they easily could have made all 36 of  
15 those tools because they had at least -- and I reviewed the  
16 same records that Mr. Brooks looked at -- they had at least  
17 capacity for 20 more systems every year and we're talking  
18 about four years here. So they could have made at least 80  
19 more systems without even having to add a second shift and  
20 they could have added a second shift or a third shift. So  
21 there was no problem with actually manufacturing the sales.

22 So if you just want to show the next bullet point.  
23 So August had both sufficient marketing capability and they  
24 had sufficient manufacturing capability. Camtek never sold  
25 any more than 17 systems in the U.S. in any one year, so

1       there was no issue here.

2       Q.   So August could have physically made all the tools that  
3       Camtek sold in the United States --

4       A.   Absolutely.

5       Q.   -- during that time period?

6       A.   Absolutely. They had the parts available. They had the  
7       people available. They had the capacity to do it.

8       Q.   Okay. What's next in your analysis?

9       A.   Well, just to kind of summarize what we've done, we've  
10       covered the first three factors in terms of determining  
11       whether August is entitled to lost profits.

12               So first, that there was customer demand. We know  
13       that because customers bought a lot of Falcons and a lot of  
14       NSX machines and really nobody else's machines. Second,  
15       there were not acceptable alternatives because no one was  
16       successful in selling anything else. Third, August had the  
17       capability or the capacity to make every one of those 36  
18       sales.

19               And so what that leads us to, then, is the fourth  
20       factor, which is that we have to calculate what August's  
21       lost profits were.

22       Q.   How did you calculate the lost profits?

23       A.   Well, you have to first determine the number of  
24       infringing systems that were sold. I've said this a number  
25       of times. There were 36 infringing systems sold, 36 Falcon

1 systems, from 2005 to 2008.

2 And then second, you have to determine what  
3 August's average profit was per system. And I went through  
4 a lengthy process of trying to determine what August's  
5 profits were. They were on average \$322,973 per system, and  
6 that is based on a lot of financial information from August  
7 and I talked with their financial people and asked a lot of  
8 questions about the different kinds of costs that would be  
9 incurred in order to sell more systems than they had already  
10 been selling. So that means that they have to buy more  
11 parts. They have to pay their people to put them together.  
12 They have to sell the additional tools and service the  
13 additional tools. And it's my understanding from what  
14 Mr. Brooks testified to, that there was a small amount of  
15 additional selling expense, which I've included in this  
16 profit amount. And this amount was calculated based on  
17 August's historical profits and their actual profits from  
18 2005 to 2008 on all their other systems that they sold.

19 Q. So basically you take the number of machines times the  
20 incremental profit of August that it would have received?

21 A. Right, how much would August have made if they made  
22 additional sales of these 36 tools.

23 Q. And to do that you remove the incremental costs to make  
24 those additional sales, right?

25 A. Right. You take the sales revenue and then you take --

1     you deduct the costs to make it and the costs to sell it, an  
2     additional machine, and then that leaves you with the  
3     incremental profit, how much they would have made on each  
4     one of those tool sales.

5             So the third step is really just simple math. You  
6     multiply the number of infringing systems, the Falcon -- 36  
7     Falcon systems, times the average profit per system, so  
8     that's 36 times 323,973, and that gets you to \$11,627,020.

9     Q. What's your final conclusion in connection with your  
10    expert testimony in this case?

11    A. It's my opinion that the fair compensation to August  
12    for -- as a result of the sales of the infringing Falcon  
13    tools from 2005 to 2008 in the United States was  
14    \$11,627,020.

15             MR. GRUMBLES: No further questions.

16             MS. CHAPLIN: Your Honor, could you please switch  
17    over again to our computer. Thank you.

18                     **CROSS EXAMINATION**

19    BY MS. CHAPLIN:

20    Q. Good morning, Ms. McCloskey.

21    A. Good morning.

22    Q. I want to see if there's first a couple of things you  
23    and I can agree on at the beginning.

24             So not all patents are of equal value; isn't that  
25    right?

1 A. Yes.

2 Q. And just because someone has been issued a patent by the  
3 Patent Office does not automatically mean that the patent  
4 has substantial value?

5 A. That could be true.

6 Q. And it may or may not have value depending on the  
7 circumstances, correct?

8 A. Yes.

9 Q. And you're here to testify about damages, right?

10 A. Yes.

11 Q. And damages in a patent case are meant to provide  
12 reasonable compensation to the patent owner only if the  
13 patent is found to be infringed and valid, correct?

14 A. That's right. Those are two fundamental assumptions  
15 that have to be made by me in order to calculate damages.

16 Q. And you mentioned the relevant time period here as being  
17 2005 to 2008, right?

18 A. Yes.

19 Q. And specifically it's February 1st of 2005 through 2008,  
20 correct?

21 A. Yes.

22 Q. And even though the patent issued earlier, you agree  
23 that August is not entitled to damages from before  
24 February 1, 2005, right?

25 A. Well, I haven't made a calculation from prior to that

1 period. I guess it's up to the Court to decide what the  
2 period of entitlement is.

3 Q. But you understand that August did not mark its products  
4 with the patent number, correct?

5 A. You know, I don't know the details of the marking. I do  
6 know that you mentioned February 1st of 2005 and that was  
7 the date, I believe, that the complaint was filed in the  
8 case. So that would start the period of damages.

9 Q. Ms. McCloskey, do you remember asking for information  
10 about whether August had marked its products with the patent  
11 number in this case?

12 A. I may have asked. I don't recall.

13 Q. And you have no information that they did indeed mark  
14 their products with the patent number, right?

15 A. I didn't -- I don't recall. I didn't look into it  
16 deeply.

17 Q. Now, in your presentation in your slides you talk some  
18 about foreign sales by Camtek and by August, correct?

19 A. Yes.

20 Q. And yet we're dealing only with the United States sales  
21 of Camtek here, correct?

22 A. Right.

23 Q. And August is not entitled to any damages for any sales  
24 of the Falcon machine outside of the United States, correct?

25 A. I don't know whether they're entitled to any based on

1 other countries' laws, but what we're here today to do, I  
2 believe, is to calculate the damages related to the U.S.  
3 sales.

4 Q. And that's the 36 machines that you talked about, right?

5 A. Yes.

6 Q. So let's talk about lost profits, which you discussed in  
7 your testimony, because it's your contention that August  
8 would have made every single sale for those 36 machines,  
9 right, that Camtek actually made?

10 A. Right. We're answering the ultimate question, if Camtek  
11 had not infringed, what would August have made. And so if  
12 Camtek wasn't competing for those sales with an infringing  
13 machine, would August have made the sale and what profit  
14 would they have made on it.

15 Q. And I want to talk about your demonstrative where you  
16 had the four factors that we consider in looking at lost  
17 profits.

18 MS. CHAPLIN: So could we bring up Ms. McCloskey's  
19 demonstrative number 3, please, on the screen.

20 BY MS. CHAPLIN:

21 Q. Now, August has the burden to prove each one of these  
22 factors to get lost profits; isn't that right?

23 A. Yes.

24 Q. And all four of them have to be proven, correct?

25 A. That's -- this is one of the ways that you can prove

1 lost profits damages. There are other ways.

2 Q. But this is the way that you've presented here, right?

3 A. I've used this as an example, but there is this  
4 overarching question that you have to answer, which is if  
5 Camtek had not infringed, what would August have made.

6 Q. And to look at that you've looked at the demand, the  
7 lack of noninfringing acceptable substitutes, August's  
8 capacity to make the sale, and then your calculation,  
9 correct?

10 A. Right.

11 Q. Okay. And I want to start with factor number one, which  
12 is customer demand. And you say, "Customer demand for the  
13 patented product"; is that right?

14 A. Yes.

15 Q. And the test really is August has to prove demand for  
16 the patented feature, correct?

17 A. I think that's a legal question. I think that -- my  
18 understanding is was there customer demand for the patented  
19 product is the way that I've seen it written and explained.

20 Q. Okay. So would you agree with me that lost profits are  
21 appropriate only if there's -- if demand for the product is  
22 driven by the patented invention?

23 A. That has to be one of the reasons that the product is  
24 bought is because of the benefits or the features received  
25 as a result -- that are provided to the product as a result



1 of the patent.

2 So in this case, you know, speed, throughput,  
3 flexibility, accuracy, those are the benefits that a  
4 customer would demand and if those are provided by, in part,  
5 the patented feature.

6 Q. And so just to make it clear, you recognize there's a  
7 difference between the patented invention being the entire  
8 product and the product having certain patented features,  
9 correct?

10 A. I'm not sure I understand the question.

11 THE COURT: Let's stop here. Let's have our  
12 break. Let's take a 15-minute break and come back and  
13 continue with the cross. All rise for the jury.

14 (Recess taken at 10:50 a.m.)

15 \* \* \* \* \*

1 (11:05 a.m.)

2 IN OPEN COURT

3 (Jury enters)

4 THE COURT: Please be seated.

5 You may continue.

6 MS. CHAPLIN: Thank you, your Honor.

7 Mr. Roberts, could we have that slide back up,  
8 please? Thank you.

9 BY MS. CHAPLIN:

10 Q. Now, Ms. McCloskey, we were talking about number one on  
11 your slide when we took our break and that was customer  
12 demand, and I want to talk about exactly what we're looking  
13 for, demand for what, okay?

14 A. Okay.

15 Q. So you would agree with me that there is a difference  
16 between assuming that the patented invention is the entire  
17 product versus the patented invention being one aspect of the  
18 product, right?

19 A. Right.

20 Q. And there would be a difference in value created by the  
21 invention if it was just a part, feature of the product,  
22 correct?

23 A. Well, that would depend. If that patented feature was  
24 one of the primary reasons that people bought the product,  
25 then that would have -- add significant value to the product.

1 Q. But you'd want to look at what features are patented,  
2 right?

3 A. Yes, that's an important aspect of it.

4 Q. And in this case, what did you identify as the patented  
5 features?

6 A. It's my understanding that the fast light or a strobing  
7 light with continuous motion provides enhanced throughput on  
8 the inspection system and that's one aspect of the patented  
9 features. There are other elements that are in the patent  
10 that are being -- that may be asserted, but that's the  
11 primary one that I looked at.

12 Q. So the strobe light with continuous motion were the  
13 features that you considered as the patented features.

14 A. Well, within a system. I mean, those have to function  
15 together within a system with other elements in order to  
16 conduct the inspection, and so a system having those  
17 attributes is what my understanding was of the patented  
18 invention.

19 Q. So when you say that you -- a system, right, that you  
20 considered, did you then assume that the patent covered the  
21 entire machine?

22 A. No, I didn't think that it covered the entire machine.  
23 The machine has various elements to it.

24 Q. Including unpatented elements, right?

25 A. Right. I mean, there's not a patent on the metal case

1 or other sort of basic aspects of it.

2 Q. And in your presentation earlier, you did not talk about  
3 what portion of the machine cost is attributable to the  
4 strobe light with continuous motion, correct?

5 A. No, but that isn't relevant anyway.

6 Q. You didn't do an apportionment of percentage of profits  
7 by feature of the products, correct?

8 A. No, that's not appropriate in the damage calculation to  
9 do an apportionment like that.

10 Q. Now, a patented feature does not always have demand in  
11 the marketplace, correct?

12 A. Yes, and in those instances then you would provide a  
13 reasonable royalty as a damage amount.

14 Q. Right. So if there was not demand for it, the patented  
15 feature, it would be inappropriate to provide lost profits,  
16 correct?

17 A. I guess, yes. Well, let me just qualify that a little  
18 bit.

19 I think that the question that has to be answered  
20 is if there had not been infringement of August's patent what  
21 would August have made, and so if that meant that the Falcon  
22 wasn't sold or the Falcon was sold with some other means of  
23 inspection that didn't use the patented invention, would --  
24 then would August have made the sales.

25 Q. And so as part of that analysis, we need to look at

1 demand for the patented feature.

2 A. That's one of the ways to show that. It isn't the  
3 exclusive way, but that's one of the ways.

4 Q. Now, you understand that the '6,298 patent that we're  
5 all here talking about at length is a continuation patent, is  
6 that right?

7 A. I believe that's correct.

8 Q. And there's an earlier patent that I believe you talked  
9 about in your deposition that's been referred to as the  
10 '4,298 patent, correct?

11 A. Right.

12 Q. And do you recall that patent coming up as a subject at  
13 your deposition in this case?

14 A. Yes.

15 Q. And I presume then at some point you took a look at that  
16 '4,298 patent, is that right?

17 A. I don't believe that I ever did.

18 Q. Okay. So you did not look at the '4,298 patent to  
19 compare it to the patent in this case to see what, if  
20 anything, the '6,298 patent added, correct?

21 A. Right.

22 Q. Now, I believe you reviewed lost order reports that were  
23 generated by August Technology's employees that listed the  
24 reasons that August believes it lost sales, right?

25 A. Right.

1 Q. And you recall that some customers indicated that they  
2 preferred Camtek's Falcon over the NSX machine for technical  
3 reasons, right?

4 A. Right.

5 Q. I think the box was "technical advantage" on the forms.  
6 Do you recall that?

7 A. Right.

8 Q. And one of the reasons that customers preferred the  
9 Falcon over the NSX was the fact that the Falcon had 3D  
10 capability, right?

11 A. That might have been one of the reasons.

12 Q. Right. And that was listed on multiple lost order  
13 reports, correct?

14 A. Right, but August had a machine that could do 2D and 3D  
15 just like the Falcon could.

16 Q. But apparently August was trying to sell an NSX machine  
17 to that customer, correct?

18 A. Well, I think Mr. Brooks testified that they would --  
19 they would sell a machine that they understood was going to  
20 meet the specifications of the customer.

21 Q. And the lost order reports that we looked at were lost  
22 orders where August specifically stated it was trying to sell  
23 an NSX machine, isn't that right?

24 A. Yes.

25 Q. And you recall the problems with August's customer

1 service were also mentioned in the lost order reports, right?

2 A. Yes.

3 Q. And you've mentioned in your presentation earlier today  
4 that product service was important, right?

5 A. Absolutely. These are really complex machines that need  
6 a lot of hand-holding.

7 Q. And you've seen documents indicating that Camtek's  
8 customer service was very good, isn't that right?

9 A. I've seen both, that Camtek's customer service was good  
10 or that there were problems with Camtek's customer service.  
11 I think both August and Camtek had good experiences and bad  
12 experiences with customers.

13 Q. Okay. So in answer to my question, you did see  
14 documents indicating that some customers had a good  
15 experience with Camtek service, correct?

16 A. Some did.

17 Q. And you saw in the lost order reports that customers  
18 attributed ease of use as a factor to why they bought the  
19 Falcon machine, right?

20 A. That was one of the reasons stated.

21 Q. And you recall in certain circumstances one of the boxes  
22 checked was that August was unable to do the application. Do  
23 you remember that?

24 A. Yes, that was listed there too.

25 Q. Do you recall that customers wanted on-site dedicated

1 service engineers for no cost?

2 A. Well, that was something that was stated there, but  
3 typically that was not usually the case that they would get  
4 on-site service for no cost, but Camtek started to offer that  
5 and so then that became an expectation of customers. Now, if  
6 Camtek hadn't been there competing because they didn't --  
7 they weren't able to use -- sell the Falcon because of their  
8 infringement, that expectation wouldn't have been created.

9 Q. You would agree with me that Camtek even before the date  
10 you claim that our damages period starts, that there were  
11 previous sales to customers, right, that August is not  
12 entitled to seek damages on, correct?

13 A. That's the damage period, but the behavior related to  
14 infringement is also relevant whether it occurred in the  
15 damage period or not.

16 Q. And you remember in the documents that customers wanted  
17 custom software applications, correct?

18 A. Some did.

19 Q. And some customers noted that the Falcon had better  
20 throughput than August, right?

21 A. As it was configured at the test, yes, not consistently,  
22 though. August won a number of sales because of their better  
23 throughput.

24 Q. And you certainly saw some documents in which August had  
25 better throughput, but they lost the sale, isn't that right?



1 A. Yes, maybe because of price because Camtek came in with  
2 a low price.

3 Q. But you don't know why, right? I mean, you saw that  
4 August claimed to have higher throughput and yet lost the  
5 sale, correct?

6 A. Right. Well, it says on the lost order reports why they  
7 lost the sale, and sometimes they had the higher throughput,  
8 but maybe Camtek came in with a lowball price.

9 Q. And sometimes Camtek had a better defect capture rate,  
10 correct?

11 A. Well, that could have been one of the things.

12 Q. And that goes to the accuracy of the machine, right?

13 A. I believe so, yes.

14 Q. And so regardless of how fast your machine can run, it's  
15 only -- speed is only so valuable if you have an accurate  
16 machine, right?

17 A. Right. I mean, that's why those three, you know, sort  
18 of mantra words: accuracy, speed and flexibility are three  
19 very important things to customers.

20 Q. And you understand that some customers wanted a free  
21 demo machine for a period of time, right?

22 A. Well, some customers were offered a free demo machine.  
23 I don't know that they required it.

24 Q. Do you remember when I was talking with Mr. Brooks about  
25 the reasons why on the lost order reports people choose the

1 Falcon machine? Do you remember that?

2 A. Yes.

3 Q. And let's take a look -- and we'll have to pull it up on  
4 the screen. It's previously admitted as Defendant's Trial  
5 Exhibit 173. I don't believe I have it in my book, so I'm  
6 not sure if you do either, but it was admitted yesterday.

7 Do you see that document?

8 A. Yeah. It's in my book.

9 Q. Oh. Very good. And do you recall Mr. Brooks testified  
10 about that document?

11 A. Right.

12 Q. And I'd like you to look at the chart at the bottom that  
13 summarizes the reasons from the lost order reports why people  
14 chose the Falcon machine.

15 A. Okay.

16 Q. All right. Now, on that chart not a single one of those  
17 items mentions anything about the strobe light, correct?

18 A. Yeah, I don't see it listed here.

19 Q. And I don't actually see throughput on that list either.  
20 Do you?

21 A. I see "better throughput" as one of the items on the  
22 left.

23 Q. Very good. Your eyes are better than mine. Thank you.

24 And this indicated in that case that the Falcon had  
25 better throughput, correct?

1 A. In that particular -- well, in whatever circumstance --  
2 I mean, this is a summary of a variety of different reports.

3 Q. Right. I understand. And let's turn to the next page,  
4 if you would with me, for the single main reason why Camtek  
5 won these sales with its Falcon device. The biggest one on  
6 this pie chart is the fact that it had both 2D and 3D, isn't  
7 that right?

8 A. Right, and August had a machine that could do 2D and 3D  
9 as well. I mean, I think we're -- we need to answer the  
10 question if the Falcon wasn't sold or wasn't able to be sold  
11 with the infringing element to it, what would August have  
12 made, and you're obfuscating it with this pie chart. I mean,  
13 if there was no Camtek Falcon, August would have made the  
14 sale. I mean, it's as simple as that.

15 Q. And you claim they would have made every one of these,  
16 right?

17 A. Yes.

18 Q. All right. Let's talk about those, the infringing  
19 element as you just referred to it, right?

20 So you recognize that 3D inspection is not an  
21 element that's covered in the patent, correct?

22 A. Right.

23 Q. And in fact, you wrote in your report in this case that  
24 the '6,298 patent describes an automated 2D macro inspection  
25 tool, correct?

1 A. Right.

2 Q. And I know you were here yesterday and so you heard some  
3 testimony from Mr. Brooks talking about throughput, right?

4 A. Right.

5 Q. And you understand from that testimony that alignment  
6 matters for throughput, doesn't it?

7 A. Right.

8 Q. And that the speed of the camera matters for throughput,  
9 right?

10 A. Right.

11 Q. And that the ability to focus, the camera's ability to  
12 focus, matters for throughput, correct?

13 A. Right.

14 Q. And I think earlier you talked about the strobe light  
15 and continuous motion, right?

16 A. Right, but that goes to speed, mm-hm.

17 Q. Mm-hm. And I want to make sure you understand that  
18 continuous motion was present in unpatented earlier products,  
19 right?

20 A. Perhaps it was.

21 Q. And did you hear Mr. Brooks indeed testified about the  
22 NSX-90, which is not covered under the patent-in-suit,  
23 correct?

24 A. Right.

25 Q. And that that machine had continuous motion, right?

1 A. Maybe it did. I mean, Mr. Brooks testified. I don't  
2 know for a fact.

3 Q. Okay. But you recognize that there are unpatented 2D  
4 macro inspection tools, correct?

5 A. There are some, yes.

6 Q. And the NSX-80 was such a machine.

7 A. Right, although during the period of time that we're  
8 talking about, it was long since discontinued.

9 Q. And there was an NSX-90. There was also an unpatented  
10 2D macro inspection machine, right?

11 A. Right, but they don't really come into play here related  
12 to the damage period that we're talking about.

13 Q. And focus more on features, and so I want to talk with  
14 you a little bit about these machines.

15 Now, you did not specifically analyze whether there  
16 was any consumer demand for the strobe light feature,  
17 correct?

18 A. I based my analysis of demand on the fact that the  
19 Falcon infringed the -- allegedly infringes the patent, that  
20 there was high market acceptance for the Falcon, there was  
21 also high market acceptance for the NSX products, and that as  
22 a result of the sales activity of products that incorporated  
23 the patent, that presumptively demonstrates that there was  
24 customer demand.

25 Q. But my question was different. My question was: You

1 did not analyze whether there was consumer demand for the  
2 strobe light feature, correct?

3 A. It was my understanding that the strobe light feature  
4 led to incrementally faster inspection and therefore, as a  
5 result of customers' continual demand for better and faster  
6 inspection, that the strobe light feature was part of the  
7 customers' demand for speed.

8 Q. Okay. Let's take a look at your deposition.

9 MS. CHAPLIN: Mr. Roberts, could you please bring  
10 up page 184, lines 10 to 11?

11 Q. Because you were deposed in this matter, correct?

12 A. Yes.

13 Q. And you testified there under oath.

14 A. Yes.

15 Q. All right. And do you see your testimony there on the  
16 screen where it says: "I didn't perform an analysis about  
17 demand of the strobe light"?

18 A. Right, and I think that's what I just said. I said that  
19 the demand was for speed and that the strobe light provided  
20 incrementally better speed in the inspection.

21 Q. Now, you do know that August Technology does not claim  
22 to have invented the first strobe light ever, right?

23 A. That's true, but it was my understanding that I have to  
24 assume that the patent is valid, okay --

25 Q. Right. I understand that's your assumption, yes.

1 A. -- and that the Falcon infringes, and so I don't really  
2 get into the details of what came before or whether a strobe  
3 light is patentable or not. That's for someone else to  
4 decide.

5 Q. All right. So after demand, let's look back at your  
6 slide where we walked through these four factors.

7 The second one is lack of any acceptable  
8 alternatives, correct?

9 A. Yes.

10 Q. And August has the burden of proving that no acceptable  
11 noninfringing alternatives existed for the patented product,  
12 right?

13 A. Right.

14 Q. And I know you described this in your report as a  
15 fundamental part of any "but for" analysis for lost profits,  
16 correct?

17 A. If you're performing an analysis based on these four  
18 factors, this is an important element for satisfying the test  
19 for lost profits.

20 Q. Would you agree with me that the lack of any acceptable  
21 noninfringing alternatives is fundamental to any "but for"  
22 analysis regarding entitlement to claim lost profits?

23 A. Yes.

24 Q. Now, as part of this factor that we're looking at, the  
25 lack of acceptable alternatives, you need to define the

1 market, right?

2 A. Well, that's one way of doing it.

3 Q. And indeed you talked about defining the market in your  
4 testimony earlier, correct?

5 A. Right.

6 Q. All right. And let's take a look at that. I believe  
7 that was your slide number five.

8 And there at the top you have: "Define relevant  
9 market: finished wafer inspection," correct?

10 A. Right, which is synonymous with backend inspection.

11 Q. And are you aware that August has a machine called the  
12 AXi that they say falls under the patent in this case?

13 A. Right, and that's for front end applications or during  
14 the manufacturing process of wafers --

15 Q. Right.

16 A. -- but I was trying to talk about and I testified before  
17 that the relevant market is where Camtek and August compete,  
18 and that's finished wafer inspection.

19 Q. Okay. So you're excluding the front end from your  
20 market definition, correct?

21 A. Right.

22 Q. Now, this definition, finished wafer inspection market,  
23 is different from the definition that you had in your expert  
24 report, isn't that right?

25 A. This is a term that has been used previously in the



1 trial, so I was trying to be consistent, but it's synonymous  
2 with the market definition that I used in my report. It just  
3 uses slightly different words so that the jury hears the same  
4 term.

5 Q. All right. And I'd like to look at the words that you  
6 used in your earlier report. If you could -- I have  
7 Defendant's Exhibit 1025 for demonstrative purposes.

8 MS. CHAPLIN: We move to admit Defendant's Exhibit  
9 1025 just for demonstrative purposes.

10 MR. GRUMBLES: No objection.

11 THE COURT: Be admitted.

12 Q. Now, Ms. McCloskey, if you could turn your attention to  
13 that Exhibit 1025. It's on your screen there or in your  
14 book, whatever is more convenient.

15 I've taken your slide and I've added your  
16 definition from your report where you said the relevant  
17 market in this case was automated 2D macro inspection market  
18 for silicon wafers, correct?

19 A. Is that the quote from my report, yes.

20 Q. Yes. And the 2D, right, the two-dimensional inspection  
21 aspect of that definition is not something that you talked  
22 about earlier, correct?

23 A. I'm sorry. In what context?

24 Q. When we look at how you define the relevant market in  
25 your earlier testimony, it was just basically all backend

1 inspection, right?

2 A. Right.

3 Q. And now in your report, though, you were much more  
4 precise about two-dimensional inspection in the backend  
5 inspection arena, right?

6 A. Well, that's primarily what goes on in the backend is  
7 two-dimensional inspection. There's only a small amount of  
8 3D inspection that's done during the bumping process and not  
9 everyone even uses 3D inspection in the backend.

10 Q. And so in your report and at your deposition you  
11 excluded three-dimensional inspection in the backend from  
12 your relevant market, correct?

13 A. I wouldn't say I excluded it, but we're talking about  
14 backend inspection or finished wafer inspection. That's  
15 primarily two-dimensional throughout almost the process of  
16 the backend or finished wafer inspection, and then a small  
17 portion of it includes a three-dimensional piece, but you  
18 still have to do -- you always do two-dimensional inspection  
19 in the backend and a little bit of it is three-dimensional.

20 Q. So this definition that's in the red from your report,  
21 do you agree that that's the relevant market to consider for  
22 damages here in this case?

23 A. Absolutely.

24 Q. All right. And indeed, you came to that definition that  
25 I had up in the red, the two-dimensional for silicon wafers,

1 based on your discussions with August Technology's management  
2 and review of documents in this case, correct?

3 A. Right.

4 Q. And you define a relevant market because you need to  
5 know where the parties are competing to know if there's other  
6 competitors, correct?

7 A. Right.

8 Q. And you testified that it's your opinion that in that  
9 market it's only August and Camtek, right?

10 A. In the United States. Those are the only competitors  
11 that have had any sales success.

12 Q. Now, in coming to your analysis of who is in the market,  
13 I know in your report it states that there is not a formal  
14 market study about market share for this market, right?

15 A. Right.

16 Q. And in your reports you did not express an opinion about  
17 what Camtek's market share was versus August's market share,  
18 right?

19 A. Right. I mean, it's pretty easy to do the math, though.  
20 Thirty-six and 54 are the systems that were sold in the U.S.  
21 market and then you just figure out who has what share.

22 Q. Now, you understand that there are companies that sell  
23 machines that do both two-dimensional inspection and have  
24 three-dimensional capability, right?

25 A. Right. The Falcon has that and the August 3Di has that

1 capability.

2 Q. And if a machine is sold having both two-dimensional and  
3 three-dimensional inspection capability, you'd agree that  
4 that machine would be a competitor for the NSX products,  
5 right?

6 A. Perhaps, but the test that we have to meet here is that  
7 they were acceptable, and I think that I've already testified  
8 that there was a lack of acceptability of the other  
9 customers' 2D/3D machines.

10 Q. But you'd agree that there were a number of companies  
11 offering for sale 2D and 3D inspection devices for the  
12 backend, right?

13 A. Right, there were, but they never made any sales because  
14 we presume that there was something about them that wasn't  
15 acceptable, they weren't fast enough or they didn't meet some  
16 other criteria.

17 Q. Right, and that's a presumption on your part, right?

18 A. Well, we don't have any evidence to the contrary.

19 Q. Right. And you don't have access to ICOS's sales  
20 documents, correct?

21 A. No, we don't.

22 Q. And you had no access to RVSI's sales documents.

23 A. We do now because August bought RVSI.

24 Q. They did. But you did not have access to see if RVSI  
25 had sales during the relevant period, correct?

1 A. No. I went -- I based my analysis on discussions with  
2 August salespeople and what they knew based on their calling  
3 on customers and then later we confirmed that RVSI had no  
4 sales.

5 Q. And you had no access to SolVision sales documents,  
6 right?

7 A. Right.

8 Q. And you did not have access to documents from ICOS on  
9 whether they called on a customer to try to sell a backend  
10 inspection device, right?

11 A. Right.

12 Q. And you had no access to RVSI's documents on whether  
13 they tried to call on a customer for selling a backend  
14 inspection device, right?

15 A. Right.

16 Q. And the same for SolVision.

17 A. Right.

18 Q. And indeed, as you testified at your deposition, you  
19 understand that RVSI had a machine that did 2D and 3D  
20 inspection, right?

21 A. That's my understanding.

22 Q. And you've heard testimony about RVSI's machine that did  
23 three-dimensional inspection, right?

24 A. Right.

25 Q. And indeed, you state in your report: "RVSI was

1 marketing its tools in the United States during the relevant  
2 time period," correct?

3 A. They may have been marketing, but they weren't selling.

4 Q. And you knew that the RVSI WS series machines did 2D and  
5 3D inspection, correct?

6 A. Right.

7 Q. And before August or Rudolph acquired RVSI, you  
8 understand that RVSI was located on the East Coast in the  
9 United States, right?

10 A. That's right.

11 Q. And you understand that in some of the situations where  
12 Camtek sold Falcon machines, RVSI was also competing for  
13 those sales, correct?

14 A. I don't think we know that they were competing for those  
15 sales, but we know that RVSI systems were being tested with  
16 the others. I have no idea whether they had actually  
17 proposed anything or had made a quote.

18 Q. But you know they were present in those situations, is  
19 that right?

20 A. Well, I only know of a few.

21 Q. Okay. But you know that RVSI was present at a few.

22 A. Well, I don't know if their salespeople were present,  
23 but their machine was being tested, and I don't know if that  
24 was because that customer already owned an RVSI machine or if  
25 there was an active sale going on.

1 Q. Because you didn't have access to those records,  
2 correct?

3 A. Not at the time that I did my report.

4 Q. And you certainly reviewed information, public  
5 information, about RVSI, right?

6 A. Right.

7 Q. And you've reviewed documents indicating that RVSI said  
8 it was making product sales, right?

9 A. Yes. RVSI was claiming to be making product sales,  
10 although it isn't clear where because they weren't -- the  
11 August salespeople never saw them.

12 Q. And even through RVSI's financial trouble, right, there  
13 were some articles and materials that you reviewed about  
14 RVSI, right?

15 A. Right.

16 Q. And from those you know that there were articles saying  
17 that RVSI was aggressively pursuing sales of its wafer  
18 inspection devices, correct?

19 A. They could have said that. I don't recall specifically.

20 Q. And in your reports you disclose that RVSI was a company  
21 that was competing here, right?

22 A. I probably did, yes. I mean, they were -- they were a  
23 United States company.

24 Q. And at your deposition you also talked about ICOS as  
25 being another company that you referred to as being in the

1 mix here. Do you remember that?

2 A. Right.

3 Q. And I know you mentioned on your direct testimony about  
4 ICOS selling eight tools to CREE in the United States,  
5 correct?

6 A. Right.

7 Q. And other than Texas Instruments, are you aware of any  
8 Camtek customer that bought eight or more machines?

9 A. I don't think so.

10 Q. And eight machines is a big sale of these devices,  
11 right?

12 A. Yes, certainly.

13 Q. And you looked at public information available about  
14 ICOS, didn't you?

15 A. Yes.

16 Q. And I presume you would have looked at ICOS's web site,  
17 right?

18 A. Right.

19 Q. And thus you would have seen that in 2005 ICOS was named  
20 a recipient of Intel Corporation's Preferred Quality Supplier  
21 Award for its efforts in supplying Intel with semiconductor  
22 inspection equipment. Do you remember that?

23 A. Yes.

24 Q. And you're aware then that ICOS has an office in Redwood  
25 City, California, right?



1 A. I think I heard that from Mr. Brooks' testimony, but I  
2 don't know that I knew that already before today.

3 Q. All right. I know you said you looked at their web site  
4 and I can direct you to Defendant's Exhibit 1032. It's in  
5 your binder there.

6 MR. GRUMBLES: Your Honor, we object on hearsay  
7 grounds. There's some kind of third-party press release.

8 MS. CHAPLIN: Your Honor, it's a document she  
9 identified, that she went to ICOS' web site, and it's  
10 actually not a press release. It's just a location list.

11 THE COURT: Did she say that she looked at it?

12 MS. CHAPLIN: She said that she look at their web  
13 site.

14 MR. GRUMBLES: Your Honor, there's no foundation  
15 that she actually looked at this document.

16 THE COURT: It's cross-examination. Go ahead.  
17 It's your expert. If she looked at it, she can cross-examine  
18 on it.

19 BY MS. CHAPLIN:

20 Q. Now, Ms. McCloskey, do you have Defendant's Exhibit 1032  
21 in front of you?

22 A. Yes.

23 Q. All right.

24 MS. CHAPLIN: And, Mr. Roberts, if you could bring  
25 that up on the screen.

1 Q. You recognize from being at ICOS's web site that this is  
2 a page from the web site, correct?

3 A. I've never seen this page.

4 Q. Okay. Could you look at the second page with me at the  
5 bottom of the page. Do you see that ICOS identifies itself  
6 as having a U.S. office at Redwood City, California?

7 A. That's what it says here. I don't know. This doesn't  
8 have a date on it. It doesn't have a URL from the Internet,  
9 so I don't know anything about this document. I've never  
10 seen it before.

11 Q. All right. Now, looking at ICOS's information from the  
12 web site like you talked about, you're aware that ICOS took  
13 over the 2D wafer inspection technology of Siemens AG in  
14 2004, right?

15 A. I don't recall that.

16 Q. Okay. And you certainly heard of KLA during these  
17 proceedings.

18 A. Yes, I'm familiar with the company KLA.

19 Q. And you know that they're a company in the United  
20 States, right?

21 A. Right, but they do -- their systems do a different level  
22 of inspection.

23 Q. You're talking about their front end inspection devices,  
24 right?

25 A. That's right.

1 Q. Okay. And were you here this morning when Mr. Brooks  
2 testified about the fact that KLA has acquired ICOS?

3 A. Yes.

4 Q. And that that happened in 2008, right?

5 A. I believe that's what he said.

6 Q. And you know that ICOS's machine does both two  
7 dimensional and three-dimensional inspection, right?

8 A. I believe that that's the case, but I don't know  
9 specifically.

10 Q. Now, in your report you wrote: "There were two  
11 companies that offered 2D macro inspection products in the  
12 U.S. market, RVSI and ICOS," correct?

13 A. Yeah, I see that on page 21 of my report you're reading  
14 from.

15 Q. Yes, that's correct.

16 A. Mm-hm.

17 Q. And then at your deposition you also talked about the  
18 company called SolVision as also being in the mix here. Do  
19 you recall that?

20 A. Yes.

21 Q. And you acknowledge that in certain circumstances there  
22 were other companies competing for sales in the U.S. with  
23 Camtek and August, right?

24 A. That's right, but the existence of a competitor or an  
25 offer doesn't make it acceptable. It has to have the

1 attributes that are offered by the patented invention in  
2 order to make it an acceptable substitute.

3 Q. And that's your opinion.

4 A. No, that's I believe right out of the professional  
5 literature and the case law, but I'm not a lawyer, so I'll  
6 let you lawyers argue about it.

7 Q. All right. So even though RVSI was out competing for  
8 sales that Camtek got, you ended up dismissing them from your  
9 analysis as if they did not exist, correct?

10 A. Not as if they didn't exist. I acknowledged their  
11 existence and reviewed all of the information that I could to  
12 understand whether they were acceptable or not and they  
13 weren't acceptable. No one ever bought their products in the  
14 United States.

15 Q. That you're aware of.

16 A. Well, that anybody's aware of at least in this case,  
17 because we haven't heard of anybody buying anything from  
18 them.

19 Q. Let's take a look at your deposition, because we asked  
20 you this question there. It's page 167, starting at line 24  
21 and going to page 168, line 3. You were asked:

22 "Question" -- talking about RVSI -- "Okay. So you  
23 just dismissed them as if they didn't exist, right?

24 And you answered: "Based on all of my analysis of  
25 RVSI, yes."

1 Correct?

2 A. Well, that's what it says there based -- that I  
3 dismissed them as if they didn't exist? Well, that they  
4 weren't acceptable.

5 Q. And you also ended up dismissing ICOS from your analysis  
6 as if they did not exist, correct?

7 A. Well, they weren't an acceptable substitute.

8 Q. So the answer to my question is yes?

9 A. Yes.

10 Q. And the same thing for SolVision, correct?

11 A. Right.

12 Q. Now, you realize from Mr. Brooks' testimony and from  
13 probably earlier testimony in this case that people can also  
14 choose to do manual inspection, right?

15 A. Well, they can, but I think Mr. Brooks said that once  
16 they've switched to automated inspection they don't go  
17 backwards.

18 Q. Were you here to hear the testimony about Flip Chip and  
19 the fact that they have some manual inspection still in other  
20 countries?

21 A. I believe so.

22 Q. And August also sold a WAV product. I believe we say it  
23 WAV, W-A-V. Do you remember that?

24 A. Right, the WAV 1000. It was a product that they  
25 acquired from a firm called STI.

1 Q. Yes. Thank you. And you did not consider the WAV 1000  
2 as a noninfringing alternative in your analysis, correct?

3 A. Right. I mean, by the time that -- we're talking about  
4 the sales competition between Camtek and August. The  
5 WAV 1000 was being discontinued and it was considered to be  
6 an inferior product as compared to the NSX and 3Di products.

7 Q. And August considered it an inferior product; is that  
8 what you're saying?

9 A. Right.

10 Q. Now, it's your understanding that there is a separate  
11 market for 3D-only machines, is that right?

12 A. There was a need for 3D-only machines in the bumping  
13 process in the backend, or that could also be accomplished by  
14 a combination 2D/3D machine.

15 Q. And you see that as a separate market, this 3D market,  
16 right?

17 A. Well, they're selling to the same customers, but it's a  
18 separate market from the one that Camtek and August competed  
19 in, which was a 2D/3D combined market.

20 Q. And you recognize that if a customer needed 3D  
21 inspection capability, then a two-dimensional inspection  
22 device would not suffice, right?

23 A. Well, it depended on what kind of 3D inspection that  
24 they needed. The NSX could do a limited kind of 3D  
25 inspection, but maybe not probe inspection or bump height

1 measurement and that sort of thing.

2 Q. Now, we've been talking about 36 machines of Camtek's,  
3 right, at issue here?

4 A. Yes.

5 Q. And most of those machines are capable of doing 3D  
6 inspection, correct?

7 A. Right, many of those were capable. They were 2D/3D  
8 combined machines.

9 Q. Indeed, 21 of the 36 machines had this 3D capability,  
10 right?

11 A. Right.

12 Q. And that was -- Camtek's 800 series had 3D capability,  
13 correct?

14 A. The Falcon 800 had 2D and 3D capability combined in one  
15 machine and it was sold as one machine, and there were other  
16 Falcon machines where 3D was added on, could be added on if  
17 the customer wanted that.

18 Q. And those -- the add-on component of 3D was if it had  
19 the CCS, the LTS or CTS component, right?

20 A. Right.

21 Q. And it's your understanding, isn't it, that the NSX  
22 machines were strictly 2D inspection systems?

23 A. Right. I mean, with a very limited kind of ability to  
24 do some 3D, but yes, they primarily were a 2D inspection  
25 system for the backend.

1 Q. Okay. I'd like to look at your deposition testimony,  
2 page 90, line 6 to 10, where we were asking about the NSX  
3 machine. Do you recall testifying:

4 "It's my understanding that the NSX machines are  
5 strictly 2D inspection systems and they don't -- they don't  
6 have a 3D module that I'm aware of."

7 Correct?

8 A. Right, that's correct, but we did hear Mr. Brooks say  
9 that there was a limited ability of the NSX to do a little  
10 bit of 3D, but I don't want to present it as it was capable  
11 of doing the same kind of 3D that a 3Di machine could do.

12 Q. Or that a Falcon could do, right?

13 A. Or that a Falcon could do, right. It was a 2D machine  
14 and it was designed for two-dimensional inspection.

15 Q. Now, in the 3D category, you realize that there were  
16 suppliers who offered 3D-only inspection devices, right?

17 A. Right.

18 Q. In addition to August, in addition to the machines that  
19 we've talked about thus far, is that right?

20 A. Right.

21 Q. And indeed, I'm sure you heard that RVSI's machine with  
22 3D capability was the benchmark for IBM.

23 A. Right.

24 Q. Now, in your analysis, you assumed that if a customer  
25 bought a Camtek 800 series machine with 3D capability, that



1 that customer would have bought August's 3Di machine, right?

2 A. Right. For purposes of my calculation, I assumed that a  
3 Falcon 800 -- if they had not been able to sell a Falcon 800,  
4 that customer would have bought a 3Di.

5 Q. And then in looking at the Camtek sales that included  
6 the 3D module, the three letters that we had talked about,  
7 right the add-on, right, the CCS, LTS or CTS module, right,  
8 then you assumed that the customer would have chosen either  
9 an NSX or a 3Di machine from August if Camtek was not  
10 available, right?

11 A. That's right.

12 Q. But you weren't sure which one they would buy, correct?

13 A. Right. It wasn't clear, because sometimes Camtek would  
14 propose a Falcon machine and August would propose an NSX  
15 machine, and then ultimately Camtek would sell a Falcon  
16 machine with a 3D option on it. So it wasn't clear  
17 whether -- that the customer initially wanted both 2D and 3D,  
18 or if the customer wanted just 2D and then later added on the  
19 3D option once the sale was finalized. There wasn't enough  
20 information to know that, so I tried to create a combination  
21 of either they would have bought an NSX or they would have  
22 bought a 3Di in the absence of a Falcon.

23 Q. And so that combination that you're talking about, I  
24 know you represented it in your report as NSX/3Di, right?

25 A. Right. I made a calculation of a blend of the profit

1 between those two systems without knowing how the customer  
2 would have actually decided it. I mean, we can't know that  
3 because the customer bought a Falcon, so we have to make an  
4 assumption that they would have either bought an NSX or a 3Di  
5 depending on their application.

6 Q. Right. Because there wasn't a machine that was an  
7 NSX/3Di, to avoid confusion.

8 A. Right, there wasn't. That was just something that I did  
9 in order to create a profit amount that would allow the  
10 customer to -- you know, sort of customer preference to drive  
11 the sale, and that was based on the historical sales of NSX  
12 and 3Di.

13 Q. And if I remember right, that historical sales mix  
14 showed that nine-tenths of people chose the NSX over the 3Di,  
15 correct?

16 A. Right, and that's pretty consistent with the type of  
17 inspection that goes on in the finished wafer inspection part  
18 of the process. The majority of the inspection that goes on  
19 in the backend is two-dimensional inspection and then  
20 sometimes there is three-dimensional inspection of bumps.

21 Q. Now, in trying to figure out which product they would  
22 have bought to come to this analysis, you spoke with a  
23 Mr. Rick Trevino, who's a salesperson for August, correct?

24 A. Right.

25 Q. And in that discussion he noted that the 3Di was a much

1 more expensive machine, right?

2 A. That's right.

3 Q. And the NSX machine lacked the 3D capability, right?

4 A. Yes.

5 Q. And so he said it was hard to say how that would have  
6 played out.

7 A. Exactly, so that's why I had to make a blended profit  
8 amount.

9 Q. Now, during our damages period, so February 1st, 2005  
10 through 2008, August only sold three 3Di machines in the  
11 United States during that entire time period, right?

12 A. Yes.

13 Q. And specifically, August did not sell a single 3Di  
14 machine in 2007, correct?

15 A. That's right.

16 Q. And they didn't sell a single 3Di machine in the first  
17 half of 2008, right?

18 A. Right.

19 Q. I think that's as far as your data went in 2008 in your  
20 report, if you recall that.

21 A. Yes.

22 Q. And you recall that customers expressed concerns about  
23 August's 3Di machine, right?

24 A. Some did, others were satisfied with it.

25 Q. And you know that some concerns were that the 3Di

1 machine had much slower throughput than other competitors'  
2 machines, right?

3 A. That was in the 3D portion of it, yes. The 2D portion  
4 was similar throughput as an NSX, because it basically was an  
5 NSX machine with 3D bolted onto it.

6 Q. But when the 3Di machine did 3D inspection, it had much  
7 slower throughput than other machines, right?

8 A. Than other competing 3D machines.

9 Q. Exactly. And throughput's extremely important, I  
10 believe you said, right?

11 A. Well, it's my understanding that throughput is really  
12 important in the 2D inspection portions of the backend, and  
13 when it relates to 3D inspection, obviously throughput is  
14 important, but they're not usually inspecting a hundred  
15 percent. They're just inspecting a portion or a sampling.  
16 So the speed of a 3D is always going to be slower than a 2D  
17 just because of the way that the technology works, as I  
18 understand it.

19 Q. But you'd certainly expect a customer in choosing among  
20 various 3D machines that are available to look at the  
21 throughput to see how fast it can operate.

22 A. Oh, sure, absolutely, yeah. It's very important.

23 Q. Let's turn to a specific situation and that is on Texas  
24 Instruments, because you claim that August would have made  
25 every single sale that Camtek made to Texas Instruments,

1 right?

2 A. Yes.

3 Q. And that's 16 machines.

4 A. Right.

5 Q. So a significant portion of our 36 machines, right?

6 A. Right.

7 Q. Now, you're aware that Texas Instruments did an  
8 evaluation of six different machines before it decided to buy  
9 from Camtek, correct?

10 A. Right.

11 Q. And let's take a look at that. That's Defendant's Trial  
12 Exhibit 930 in your binder.

13 MS. CHAPLIN: Your Honor, we previously discussed  
14 this exhibit with opposing counsel and we move for its  
15 admission, Defendant's Exhibit 930.

16 MR. GRUMBLES: No objection.

17 THE COURT: Be admitted.

18 MS. CHAPLIN: Thank you, your Honor.

19 Q. Do you have it there in your binder?

20 A. Yes, I do.

21 Q. All right. So let's take a look at that on the screen,  
22 and it has a declaration on the front of it from a gentleman  
23 from Texas Instruments talking about these documents coming  
24 from Texas Instruments.

25 And if you turn to page -- it's behind Exhibit A,

1 the first page. It probably will look more familiar to you.

2 Do you see that? It's marked CAM 36276. Are you  
3 there?

4 A. Yes.

5 Q. All right. And you recognize this as an evaluation or a  
6 report on an evaluation that Texas Instruments did on  
7 Camtek's Falcon machine.

8 A. Yes.

9 Q. And this is a document that you discussed at your  
10 deposition, correct?

11 A. Right.

12 Q. And you understand from this document that Texas  
13 Instruments looked at the Camtek Falcon, right?

14 A. Right.

15 Q. And also that they looked at RVSI's WS 2500 tool, isn't  
16 that right?

17 A. Right.

18 Q. And they also looked at August's WAV 1000 tool, right?

19 A. Right.

20 Q. And they also looked at August's NSX-95, NSX-105, and  
21 the 3Di machine, right?

22 A. Right.

23 Q. Let's look at the first page, the summary at the top,  
24 just so everyone can see it or hear it. I'll read that first  
25 little section. It says:

1           "The Camtek AVI tool was determined to be the best  
2       alternative out of 6 vendors with a value of 7.9 with the  
3       nearest vendor being RVSI with a value of 7.8 based on 6  
4       categories: defects, capacity, engineering/technology,  
5       program time, company strength, and cost."

6           Do you see that?

7       A.    Yeah. It just -- the one thing I'd clarify is it says:  
8       "ENG/TECH," which I think doesn't mean technology. I think  
9       it means engineers or technicians.

10      Q.    Very good. Thank you for that correction.

11      A.    Yup.

12      Q.    All right. But you would agree me that this report  
13       shows that the RVSI machine got the second highest score  
14       after Camtek's Falcon machine, right?

15      A.    Right.

16      Q.    And that company strength was something already  
17       considered by Texas Instruments in coming to the value that  
18       it gave to the RVSI machine, correct?

19      A.    Right.

20      Q.    And I know I talked about one exhibit with Mr. Brooks  
21       yesterday and I'd like to turn your attention there. It's  
22       not in your book, but it's previously admitted, so we'll  
23       bring it up on the screen, and that's Defendant's Exhibit  
24       201.

25           I know it's a little hard to see on your screen

1       there, so I'll tell you a little bit of what it is and then  
2       we can zoom into a particular spot.

3               This is an e-mail -- I'm looking at the bottom of  
4       that first page -- that Robert Backie sent to Mr. Brooks on  
5       July 26th, 2006, and on the second page, August 50713, it  
6       reports feedback that Texas Instruments DBUMP provided to  
7       August.

8               Do you remember this document?

9       A.     Yes, I do.

10      Q.     All right. And so this is one of the documents that you  
11      saw that showed that there were some serious issues with  
12      August's customer service, correct?

13      A.     Yeah. Looks like they were pretty mad.

14      Q.     It does. And despite this fact, you still contend that  
15      August would have sold all 16 machines to Texas Instruments  
16      if the Camtek Falcon was not in the market, right?

17      A.     Absolutely, because --

18      Q.     And that's despite the fact that the RVSI machine scored  
19      second above the August machines, correct?

20      A.     I think you have to take this document in the proper  
21      context.

22               First of all, August absolutely would have made  
23      these sales. August had products, systems in place at Texas  
24      Instruments. They obviously were having some difficulty and  
25      Mr. Brooks testified about this and now today there are not



1 issues with Texas Instruments.

2 If the Falcon wasn't offered, August would have  
3 continued to be the provider to Texas Instruments, and  
4 RVSI -- and RVSI, while it scored on this rubric here in this  
5 analysis which you didn't actually show, there are weighted  
6 elements to this that talked about the different elements  
7 there. If you take away the number of technicians that were  
8 involved to operate the machine, the August machines would  
9 have scored the highest.

10 Q. But in order to get there we'd have to take away the  
11 technicians number for RVSI, right?

12 A. Well, what that meant was then, on defect analysis,  
13 wafer capacity, the programming and the company strength,  
14 August would have beat RVSI. And so the number of  
15 technicians is sort of immaterial here if the technology was  
16 better. RVSI was already in the tube or down -- in  
17 bankruptcy, basically, at this point in time.

18 So, you know, I just don't see how RVSI would have  
19 made this sale. There's just no evidence that they would  
20 have.

21 Q. But Texas Instruments took the time to look at them,  
22 right?

23 A. Well, I think Texas Instruments may have already owned  
24 an RVSI at that time. We don't know whether RVSI was  
25 actually competing here. I think they were just trying to

1 compare the Falcon, which was a new offering, and so they  
2 compared it to what they knew.

3 Q. And that's your assumption, though.

4 A. It -- there's -- there's not a lot of other evidence to  
5 the contrary.

6 Q. Let's talk about Flip Chip, all right? It's a hard one  
7 to say, Flip Chip.

8 Now, you claim that August would have sold its  
9 products to Flip Chip if Flip Chip had not bought the Falcon,  
10 right?

11 A. Yes.

12 Q. And you understand that August subpoenaed Flip Chip for  
13 documents in this case, right?

14 A. Right.

15 Q. And you certainly would have looked at those documents,  
16 right?

17 A. Yes.

18 Q. And are you aware that Mr. Gardiola of Flip Chip came  
19 and testified here with us?

20 A. I believe so.

21 Q. All right. And do you recall that he testified about a  
22 Mr. Pablo Soriano that worked at Flip Chip's bumping  
23 division?

24 A. I wasn't present for his testimony, so I don't know what  
25 he said.

1 Q. All right. And you haven't reviewed the transcript of  
2 his testimony.

3 A. No. I'm sorry. I haven't.

4 Q. Okay. Now, did you indeed, though, look at these  
5 customer documents, right, as part of your analysis of what  
6 these customers would have done?

7 A. Well, I looked at a number of documents.

8 Q. Okay. Why don't we --

9 A. I assume so. I mean, I'd have to see the document to  
10 know for sure whether I'd seen it before.

11 Q. Let's take a look at then, Defendant's Trial Exhibit  
12 1009, please. It's in your book.

13 A. (Witness complies).

14 Q. It's a document produced by Flip Chip in response to a  
15 subpoena in this case talking about when Flip Chip analyzed  
16 the Falcon.

17 A. Right.

18 Q. Okay. So you recognize that document?

19 A. I do.

20 Q. All right.

21 MS. CHAPLIN: Your Honor, we move for admission of  
22 Defendant's Exhibit 1009.

23 MR. GRUMBLES: No objection.

24 THE COURT: Be admitted.

25 Q. Now, I'm going to direct you based on the Bates numbers

1 at the bottom, the little FC numbers, and FC 132 shows that  
2 the objective was to qualify the Camtek tool to perform 3D  
3 measurements on bumped wafers.

4 Do you see that?

5 A. Yes.

6 Q. All right. And let's turn to page FC 137, which is a  
7 Bump Height (Bump to Bump Comparison in Microns) chart.

8 Do you see that?

9 A. Okay.

10 Q. Okay. And do you see that in that chart, the machines  
11 that were doing the measurements were RVSI and Camtek?

12 A. Okay.

13 Q. All right. And let's look at the next page, FC 138,  
14 which is another Bump Height (Die to Die Comparison in  
15 Microns) chart. Do you see that in that chart the machines  
16 that were doing the measurements were also Camtek and RVSI?

17 A. I see that.

18 Q. And yet it's your contention that August would have made  
19 the sales to Flip Chip that Camtek made if Camtek was not in  
20 the market, right?

21 A. That's right. Flip Chip was a customer of August, not  
22 necessarily at this particular facility that they're talking  
23 about, but Flip Chip had bought a number of products from  
24 August. And I'm sure -- I think Mr. Brooks testified that  
25 they frequently called on Flip Chip.

1 Q. And specifically the bumping division?

2 A. That I don't remember.

3 Q. One thing that you talked about in your deposition  
4 was -- well, and here today -- was about calculating damages,  
5 right?

6 A. Right.

7 Q. And that you looked at profitability numbers, correct?

8 A. Yes.

9 Q. And so I know that in some of your calculations in this  
10 case you looked at Camtek's spending on research and  
11 development, right?

12 A. Not as it related to lost profits I didn't.

13 Q. Okay. But you certainly looked at that information,  
14 right, in this case, research and development numbers?

15 A. I may have.

16 Q. All right. And you determined that Camtek's spending on  
17 research and development was high, totaling 24 percent of  
18 their total sales amount. Do you remember that?

19 A. I think you'll have to refresh my recollection.

20 Q. Let's look at -- I'm looking at an answer from your  
21 deposition, although I don't have my specific page here.

22 You said that: "Camtek's R&D expense seemed really  
23 out of whack. It's almost -- it's 24 percent of their total  
24 sales."

25 Does that sound right?

1 A. I may have said that.

2 Q. Okay. And you remember that August's R&D spending was  
3 ten percentage points lower than that, correct?

4 A. Is that what I testified in my deposition?

5 Q. How about I'll read you this part and you tell me if  
6 it's accurate.

7 "Whereas August's is ten percentage points lower  
8 than that and they're spending -- August is spending less  
9 money overall nominally than Camtek. August only spends a  
10 little over \$3 million and Camtek is spending like five  
11 million."

12 Does that sound right?

13 A. If I testified to that, I'm sure it was correct. I  
14 just -- I can't get there from -- I can't remember.

15 Q. I understand.

16 A. Okay.

17 Q. That's fine. And unfortunately I'm lacking my page  
18 number, so don't worry.

19 THE COURT: Let's stop here. We'll start up again  
20 at 2 o'clock, 2 o'clock.

21 All rise for the jury.

22 (Lunch recess taken at 12:20 p.m.)

23 \* \* \* \* \*

24

25

1 (2:10 p.m.)

2 IN OPEN COURT

3 (JURY PRESENT)

4 THE COURT: You may continue.

5 MS. CHAPLIN: Thank you, Your Honor.

6 BY MS. CHAPLIN:

7 Q. Ms. McCloskey, when we took our break we had just been  
8 talking about research and development expenses. I failed  
9 to have my page at the deposition there for you, so let's  
10 take a look at that quick, which is page 212 of your  
11 deposition, line 7 to 16.

12 And I believe that it states, "So, you know, I  
13 mean, my initial concern, which I think I already mentioned,  
14 is that their R&D expense seemed really out of whack. It's  
15 almost -- it's 24 percent of their total sales. Whereas,  
16 August's is 10 percentage points lower than that and they're  
17 spending, August is spending less money overall, nominally  
18 than Camtek. August only spends a little over \$3 million  
19 and Camtek is spending like 5 million." Do you see that?

20 A. Yes.

21 Q. Okay. And that was your testimony at your deposition,  
22 correct?

23 A. Right.

24 Q. Now, when we talked about ICOS's machine and when you  
25 testified earlier about the ICOS machine, you said that it

1 was not an acceptable alternative, correct?

2 A. Right.

3 Q. And yet Cree bought eight of those machines. So it was  
4 acceptable to them apparently, right?

5 A. It was acceptable to Cree for the purpose that they were  
6 using it.

7 Q. That's right. And the August machine, in order to get  
8 it ready for Cree's purposes would have taken 1 million  
9 dollars' worth of development, correct?

10 A. Right. And I think the ICOS machine was also going to  
11 require modification, but ICOS was willing to do it for no  
12 charge.

13 Q. Okay. Are you aware that ICOS sold the machine to  
14 Tessera in the United States during the period at issue  
15 here?

16 A. I've never heard of Tessera.

17 Q. Okay. Are you aware that ICOS sold the machine to  
18 Silicon Microstructure in the United States during the  
19 relevant period here?

20 A. I've never heard of that company either and I don't  
21 believe that Mayson Brooks, who is more familiar with this  
22 marketplace, had ever heard of those two companies.

23 Q. And you certainly looked at August's documents talking  
24 about competition in this marketplace, correct?

25 A. Yes.



1 Q. I'd like to have you look at one more, which I don't  
2 have in your binder, so I will bring you a copy.

3 Ms. McCloskey, I've handed you what's been marked  
4 as Defendant's Trial Exhibit 1036, which is a document  
5 produced by August Technologies bearing production number  
6 August 44258 -- I'm sorry -- 253 to 44255. Do you see that?

7 A. Yes.

8 Q. And you reviewed documents like this about competition,  
9 correct?

10 A. If you could just give me a second, I'll read it.

11 Q. Of course.

12 (Pause.)

13 A. I've read other documents like this. I don't recall  
14 this particular one.

15 Q. All right. But you certainly looked at documents about  
16 August trying to get sales in the United States, right?

17 A. Yes.

18 MS. CHAPLIN: Your Honor, we move for admission of  
19 Defendant's 1036.

20 MR. GRUMBLES: No objection.

21 THE COURT: 1036 will be admitted.

22 BY MS. CHAPLIN:

23 Q. Now, Ms. McCloskey, you will see, if we look at the top  
24 of this e-mail string that's dated November 29, 2006, that  
25 it's about Fairchild Semiconductor in Pennsylvania. Do you

1 see that?

2 A. The "PA" stands for Pennsylvania? Because that isn't  
3 obvious.

4 Q. Well, if you look at the next page, it talks about  
5 Mountain Top, PA, and gives a 570 area code, so it appears  
6 to be in the United States. Do you see that?

7 A. Okay.

8 Q. And I'd like to direct your attention on the first page  
9 to what's the third e-mail down from Todd Brown, who I  
10 believe we have learned as a salesperson for August, on  
11 November 29, 2006 talking about doing an application study  
12 for Fairchild.

13 And looking at the last paragraph of that e-mail,  
14 it states, "As usual, the sooner we can get to it the better  
15 off we will be. We are in direct competition with Camtek  
16 and ICOS for this business. Thus I want to demonstrate  
17 edge, back side, and ADC as differentiator capabilities."  
18 Do you see that?

19 A. Yes.

20 Q. So you understand that August was competing with ICOS  
21 and Camtek for sales of back-end inspection devices, right?

22 A. Well, at Fairchild they were, but I'm not aware that  
23 ICOS was a competitor in any of the sales that Camtek won  
24 and I don't know the extent to which ICOS was even being  
25 considered other than what it says in this e-mail.

1 Q. All right. Now, if Camtek was not in the marketplace,  
2 right, you have said that August would get all of these 36  
3 sales, right?

4 A. Yes.

5 Q. And yet it's certainly possible if Camtek was not in the  
6 marketplace, that ICOS would have become even more popular;  
7 isn't that right?

8 A. It depends on ICOS's product and whether it was  
9 acceptable.

10 Q. Right. And it's possible that Topcon could have become  
11 more prominent in this market, right?

12 A. Oh, I don't think that Topcon was really a factor in the  
13 United States.

14 Q. Are you aware that Topcon sold a machine to PolarFab in  
15 Minnesota?

16 A. I'm not aware of it. And it was my understanding from  
17 my discussions with Mayson Brooks and with the salespeople  
18 at August as well as all the documents that I reviewed that  
19 Topcon was really not a viable competitor in the United  
20 States. It was an Asian competitor.

21 Q. And you relied on those discussions and the documents  
22 that you saw, correct?

23 A. Right, and the testimony that I heard here from  
24 Mr. Brooks.

25 Q. Now, I know you had a slide, and we don't need to turn

1 to it, that talked about 100 million dollars' worth of sales  
2 in the United States by August. Do you remember that?

3 A. Yes.

4 Q. And yet we've talked about the sales of 54 machines by  
5 August during the relevant time period, right?

6 A. Right.

7 Q. And just to be clear, the sale of 54 machines would not  
8 come out to \$100 million, correct?

9 A. That's right. The 100 million is a combination of all  
10 the inspection machines that August sells, both the AXi and  
11 the NSX and the 3Di.

12 Q. And the AXi machine is the front-end machine, right?

13 A. That's right. It's for a different application.

14 Q. Okay. Now, as part of your damages analysis, in your  
15 report you included an opinion that August should be awarded  
16 a reasonable royalty if the jury determines that lost  
17 profits are not appropriate, correct?

18 A. Yes.

19 Q. And you did not present that analysis on reasonable  
20 royalty here earlier today, correct?

21 A. That's right. I didn't think that it was necessary  
22 because I thought that lost profits on all of the sales, the  
23 36 Falcon systems, was appropriate.

24 Q. And you understand that Camtek's expert, damages expert,  
25 has opined that a reasonable royalty is the appropriate

1 measure of damages in this case, right?

2 A. I understand that, yes.

3 Q. And that it's his opinion that a 5 percent royalty would  
4 be the appropriate measure to use, right?

5 A. I believe that's what he opined in his report.

6 Q. And so if this jury were to determine that lost profits  
7 was not appropriate in this case, do you agree with  
8 Mr. Troxel's 5 percent reasonable royalty figure?

9 A. No. My analysis of the reasonable royalty was that it  
10 should be 9 percent.

11 Q. Okay. And in your presentation earlier today I don't  
12 believe that you talked about the reasons why you would  
13 opine on a 9 percent royalty rate, correct?

14 A. I didn't discuss that today, no.

15 Q. And if you were to apply a 9 -- your 9 percent royalty  
16 rate, that total amount comes up to much less than the  
17 \$11 million, correct?

18 A. That's right. That's why I said that a reasonable  
19 royalty is the minimum available. However, I think that  
20 there is quite a bit of information to support the fact that  
21 all 36 tools would have been sold by August if it had not  
22 been for Camtek's infringing Falcon system.

23 Q. That you have assumed to be infringing for your  
24 purposes, correct?

25 A. Well, that's right. That's obviously a subject that

1 will have to be decided by the jury.

2 Q. All right. Now, if we apply your 9 percent royalty  
3 rate, in looking at your report that comes to \$2,117,561,  
4 right?

5 A. Yes, that's right.

6 Q. Okay. And I've created a demonstrative slide just so we  
7 can have that number up here while we discuss it, which is  
8 Defendant's Exhibit 1024.

9 MS. CHAPLIN: Your Honor, we move to admit  
10 Defendant's 1024 for demonstrative purposes.

11 MR. GRUMBLES: No objection.

12 THE COURT: Be admitted.

13 MS. CHAPLIN: Thank you.

14 BY MS. CHAPLIN:

15 Q. So I would like to talk with you about how you came to  
16 your 9 percent reasonable royalty figure just a little  
17 while.

18 So reasonable royalty damages can be calculated by  
19 looking at what's called the Georgia-Pacific factors,  
20 correct?

21 A. Yes.

22 Q. And those are 15 factors from a case that we all use for  
23 reasonable royalty; is that right?

24 A. Yes.

25 Q. All right. And a part of that analysis is to use a

1 hypothetical negotiation, sort of a make-believe negotiation  
2 between August and Camtek that would have taken place before  
3 the alleged infringement began; is that right?

4 A. That's right.

5 Q. And you wrote about that in your report, correct?

6 A. I did.

7 Q. And that's a sit-down between two companies where they  
8 hammer out an agreement for a license to practice the '6,298  
9 patent in the United States and what that would be worth,  
10 right?

11 A. That's right.

12 Q. What Camtek would be willing to pay, right?

13 A. That's right.

14 Q. And what August would be willing to accept, correct?

15 A. Right.

16 Q. And in that negotiation you imagine that both were  
17 reasonably and voluntarily trying to reach an agreement; is  
18 that right?

19 A. Yes.

20 Q. And it's a two-way street, that conversation, correct?

21 A. Yes.

22 Q. And August would get to make its points in that  
23 negotiation, right?

24 A. Yes.

25 Q. And Camtek would get to make its points about the

1 patent, correct?

2 A. Right.

3 Q. And you imagine that August would be a prudent patentee  
4 who is willing to grant a license, right?

5 A. In a hypothetical negotiation, yes.

6 Q. And the hypothetical negotiation requires that we assume  
7 that both parties are willing to enter a license, right?

8 A. We assume that even though that's not the case. They  
9 are obviously in a lawsuit together.

10 Q. That's right, but this reasonable royalty analysis  
11 includes doing this hypothetical negotiation, which you  
12 wrote about in your report, correct?

13 A. That's right.

14 Q. Okay. And the total of that amount, applying your  
15 royalty percentage, comes to a little more than \$2 million  
16 that we have on the screen here, correct?

17 A. That's right. If you apply 9 percent to the 23 million  
18 dollars' worth of sales that Camtek made on these 36 tools,  
19 you'd get 2.1 million, but that's not the damage opinion  
20 that I am giving here.

21 Q. Right, I understand that.

22 A. Okay.

23 Q. I understand that you're saying lost profits and I just  
24 want to talk about this reasonable royalty opinion that you  
25 also provided to us in your report.



1           Now, you are aware that no one has ever offered  
2       \$2.1 million to August to get a license to this patent,  
3       correct?

4       A. I don't think that August made this patent available for  
5       licensing.

6       Q. My question was: Has anyone ever come to August and  
7       offered to pay them \$2.1 million for a license to this  
8       patent?

9       A. I don't think so.

10      Q. You're not aware of anyone that's come to August and  
11      offered to pay them a 9 percent royalty to have a license to  
12      this patent, correct?

13      A. Well, I think -- no, but August doesn't make its patents  
14      available. That's not their policy. They use their  
15      patented inventions to their own advantage to make their  
16      product more competitive than others, and they have a right  
17      to do that if the patent is valid and they can enforce it.

18      Q. But the answer to my question is no one has come to  
19      offer them a 9 percent royalty to get a license to that  
20      patent, right?

21      A. Not that I'm aware of.

22      Q. Now, in coming up with your 9 percent -- and I would  
23      like to talk about that just a little while -- you talked  
24      about a rule of thumb that is applied. Do you remember that  
25      in your report?

1 A. Yes.

2 Q. And you applied a 25 percent to 33 percent rule of  
3 thumb, right?

4 A. Right.

5 Q. And first, just because it can be a little confusing,  
6 this rule of thumb is not meant as the royalty amount  
7 itself, right?

8 A. That's right.

9 Q. And instead you apply rule of thumb to the profits  
10 derived from the product to figure out what the appropriate  
11 royalty percentage is, correct?

12 A. Right.

13 Q. And I want to talk with you about specifically why you  
14 started with this 25 to 33 percent rule of thumb. All  
15 right?

16 A. Okay.

17 Q. Now, do you start with a 25 to 33 percent rule of thumb  
18 when you are retained as an expert for the defendant in a  
19 patent lawsuit?

20 A. I always start with 25 percent.

21 Q. Okay. So 25 percent is where we begin, right, and not  
22 25 to 33 percent; is that right?

23 A. Well, there are two different sources for the 25 percent  
24 rule of thumb, but it's called the 25 percent rule of thumb  
25 and typically 25 percent is the starting point and then you

1 would go up or down from 25 percent depending on the  
2 strength of the bargaining position of each party in the  
3 hypothetical negotiation.

4 In this situation I believe that August had a much  
5 stronger bargaining position than Camtek and so I went from  
6 25 up to 30 something percent.

7 Q. 33, I believe it was. Does that sound right?

8 A. Well, I would have to look at it and refresh my memory  
9 on it.

10 Q. All right. And sometimes when you look at the  
11 25 percent rule, you also go down from 25 percent; isn't  
12 that right?

13 A. Yes, you can do that and I have done that in cases  
14 before, both for plaintiffs and defendants, but you have to  
15 look at all the facts and decide where the factors lie --  
16 where the factors favor one party or another.

17 Q. And so, for instance, in 2006 you testified in a patent  
18 case in the Northern District of Illinois on behalf of the  
19 defendant. Do you remember that?

20 A. Yes. The Black & Decker vs. Robert Bosch Tool case,  
21 yes.

22 Q. That's right. And it related something about radios for  
23 construction sites that had a charging -- a battery charger  
24 in them; is that right?

25 A. That's right.

1 Q. And in that case when you applied the 25 percent rule,  
2 you started at just 25 percent, right?

3 A. That's right.

4 Q. And then looking at the facts you ended up applying a  
5 range of 10 to 25 percent for your rule of thumb; is that  
6 right?

7 A. That's right.

8 Q. All right. Now, this rule of thumb that you apply to  
9 profits, that's something that gets applied against  
10 operating profits, right?

11 A. Typically, yes.

12 Q. And operating profits are a smaller amount than gross  
13 profit, for those of us who are not accountants, correct?

14 A. That's right.

15 Q. All right. And operating profit excludes selling  
16 expenses, general and administrative expenses, and  
17 manufacturing related expenses, right?

18 A. When you say it excludes them, what do you mean?

19 Q. Leave that out of your operating profits number. To get  
20 to operating profits you subtract selling expenses, general  
21 and administrative expenses, and manufacturing related  
22 expenses; is that right?

23 A. Okay. Yes.

24 Q. And you're aware that oftentimes if you use a rule of  
25 thumb greater than 25 percent, it's in a situation where the

1 licensee would typically get access to improvements,  
2 research and development, or other information from the  
3 patentee; isn't that right?

4 A. That depends. I mean, that's been written in an article  
5 by Robert Goldscheider, but that isn't necessarily the case.

6 Q. But it could be the case that in some of those  
7 situations it's because these additional items are included;  
8 is that right?

9 A. That's right, and that's typically in a negotiation  
10 that's not within the context of litigation. In the context  
11 of litigation you have a situation where there's already  
12 been infringement and so you need to take into consideration  
13 a variety of pieces of information, but in a negotiation  
14 before litigation there might potentially be those types of  
15 sharing of information available after the fact, but that  
16 will never happen in the context of litigation.

17 Q. Right. And so what happens for us instead is what is  
18 sometimes referred to by damages experts like yourself as a  
19 naked patent license; is that right?

20 A. Not necessarily. I don't know that I would apply a  
21 naked patent license term to this.

22 Q. But this is a situation where all -- the license that  
23 you're talking about, the 9 percent, is just for the right  
24 to practice the alleged invention in the patent and nothing  
25 else, right?

1 A. That's right.

2 Q. Okay. Now, in your reasonable royalty analysis you  
3 looked at royalty rates in the semiconductor industry. Do  
4 you remember that?

5 A. Yes.

6 Q. And you found that those were 3.5 to 4.5 percent royalty  
7 rates typically; isn't that right?

8 A. Right. That's for manufacturers of semiconductors.  
9 That's slightly different than optical inspection equipment  
10 to inspect semiconductors.

11 Q. Right. But it was 3.5 to 4.5 percent, which is lower  
12 than the 9 percent royalty rate that you advocate in this  
13 case, correct?

14 A. That's right.

15 Q. And you also looked at a report on publicly disclosed  
16 license agreements from *RoyaltySource*, right?

17 A. Yes.

18 Q. And the licenses that you found ranged in the royalty  
19 rate from 3 to 7 percent. Do you remember that?

20 A. Yes.

21 Q. And those were also below the royalty rate that you  
22 argue should apply here, correct?

23 A. That's right.

24 Q. And then you also looked at some license agreements that  
25 August Technologies had. Do you recall that?

1 A. Yes.

2 Q. And there was just one license agreement that August  
3 Technologies had that had a royalty rate above 9 percent.  
4 Do you remember that?

5 A. Yes.

6 Q. And that was this UT-Battelle license?

7 A. That's right.

8 Q. Okay. And that agreement had a 12.5 percent royalty  
9 rate, correct?

10 A. That's right.

11 Q. But that agreement was for three -- for a license to  
12 three patents, correct?

13 A. I don't remember the specifics of it.

14 Q. Okay. But you do recall that August never paid actually  
15 any royalty under that agreement, don't you?

16 A. I think that's right. They negotiated 12 or 12 and a  
17 half percent.

18 Q. And that was for a software development agreement,  
19 right, not about an inspection device?

20 A. I don't remember.

21 Q. And do you recall, though, that no software was ever  
22 actually developed under that agreement?

23 A. I'm not sure.

24 Q. And the other thing that you looked at in coming up with  
25 your 9 percent reasonable royalty rate was you characterized

1 the patent in terms of its inventiveness, I guess I would  
2 say, you called it a revolutionary patent, right?

3 A. That was one of a variety of factors that I  
4 considered --

5 Q. Right.

6 A. -- whether it was a minor improvement, a major  
7 improvement, or a revolutionary improvement.

8 Q. All right. And on that scale you determined it was a  
9 revolutionary improvement; isn't that right?

10 A. Well, I considered the range for a revolutionary  
11 improvement. I don't know that I'm necessarily qualified to  
12 decide what level of improvement it actually is.

13 Q. Okay. And in this analysis of revolutionary or major  
14 improvement or minor improvement, you were relying on an  
15 1997 article that I believe was written by Stephen Degnan  
16 and Corwin Horton; is that right?

17 A. Yes.

18 Q. And in defining what they meant by revolutionary patent,  
19 the article explains that the invention had to satisfy a  
20 long-felt need or create a whole new industry; isn't that  
21 right?

22 A. Right.

23 Q. And they give one example in that article of a  
24 revolutionary patent and that one is the Gordon Gould laser  
25 patent. Do you remember that?



1 A. Yes.

2 Q. And Mr. Gordon Gould is widely regarded as the inventor  
3 of the laser, right?

4 A. Perhaps.

5 Q. All right. And the article in talking about the median  
6 running royalty rate for licensing revolutionary patents  
7 outside of the pharmaceutical context was 5 to 10 percent,  
8 right?

9 A. Okay.

10 Q. And the article supplies a different range for a major  
11 improvement patent, right?

12 A. That's right.

13 Q. And the article defined a major improvement as something  
14 that significantly enhances quality for an existing product  
15 or service, right?

16 A. Yes.

17 Q. And the article supplied the median running royalty rate  
18 for a major improvement patent outside of the pharmaceutical  
19 context as having a royalty rate of 3 to 7 percent; isn't  
20 that right?

21 A. Yes.

22 Q. And so if this jury were to determine that this patent  
23 is not a revolutionary patent, would you agree that your  
24 9 percent rate is too high?

25 A. No.

1 Q. But you'd agree that a 9 percent royalty rate would be  
2 off the scale for even a major improvement, according to  
3 this source that you relied on; isn't that right?

4 A. You know, that was just one indicator. There were a  
5 number of indicators that I considered for the royalty rate  
6 and the primary one was the sharing of profits or the rule  
7 of thumb, which we talked about earlier in our discussion  
8 here, and the rule of thumb produces a royalty rate that is  
9 consistent with my 9 percent rate.

10 And I gave the most weight to that as well as to  
11 the Georgia-Pacific factors because what's required in a  
12 royalty analysis is to apply the Georgia-Pacific factors in  
13 a hypothetical negotiation, and that's what I did. And my  
14 opinion is that if there is a royalty that's appropriate in  
15 this case, it's 9 percent.

16 Q. All right. But looking at the article that you relied  
17 on, right, for this revolutionary, major improvement, minor  
18 improvement, 9 percent is off the scale for even a major  
19 improvement in that article, correct?

20 A. Remember that those are royalty agreements that are a  
21 result of a negotiation between two parties at arm's length  
22 where there has been no infringement, but here we have a  
23 situation where there's alleged infringement. And assuming  
24 that there's a finding of infringement, then there has to be  
25 what's called adequate compensation for the infringement and

1 adequate compensation in my opinion would be 9 percent.

2 Whether that is consistent with that article or not, I think  
3 you're misapplying the article.

4 Q. But my question is: In that article 9 percent falls  
5 outside of the range for even a major improvement patent,  
6 correct?

7 A. Right, and that's why I explained that we're in a  
8 different context than that article.

9 Q. But you applied -- you talked about that article  
10 specifically in your report, right?

11 A. Yes, because it's one of the indicators of what a  
12 potential royalty rate might be, but then you really have to  
13 apply the Georgia-Pacific factors more specifically.

14 Q. And in your Black & Decker case you also relied on that  
15 article, right, finding that in that case you had a minor  
16 improvement, correct?

17 A. That's right.

18 Q. So the article talks about the category of minor  
19 improvement. Do you recall that?

20 A. Yes.

21 Q. And it provides that the median running royalty rate for  
22 a minor improvement ranged from 1 to 3 percent for  
23 nonpharmaceutical organizations, correct?

24 A. Yes.

25 Q. And that article specifically notes that all patents are

1 not alike. And you would agree with that, correct?

2 A. Yes.

3 Q. And do you recall that it also states, in fact, over  
4 90 percent of the over 100,000 patents issued in the United  
5 States each year have little or no value to anyone other  
6 than the patent owner; do you remember that?

7 A. Yes, I do.

8 Q. And you came to the opinion that the '6,298 patent was  
9 revolutionary based on your discussions with August's  
10 employees, right?

11 A. Like I said before, I applied the revolutionary range  
12 here, but I'm not in a position to decide whether this is a,  
13 quote, revolutionary patent or not. I base that on my  
14 discussions with the August management.

15 Q. And so in your opinion, if the jury were to decide that  
16 lost profits is inappropriate here, but that damages are  
17 appropriate, then you would advocate that the 9 percent  
18 royalty rate be applied for \$2,117,561, right?

19 A. Only if there was a finding that lost profits wasn't  
20 available on any one of those 36 system sales.

21 MS. CHAPLIN: Thank you.

22 THE COURT: Anything further?

23 **REDIRECT EXAMINATION**

24 BY MR. GRUMBLES:

25 Q. Good afternoon, Ms. McCloskey. Since the break opposing

1 counsel has been asking you about royalty calculation. Just  
2 to clarify, why did you include a royalty calculation in  
3 your expert report?

4 A. Because according to the patent statute, a party that  
5 has suffered infringement of their patent is entitled to at  
6 a minimum a reasonable royalty. So I provided the  
7 calculation, but it was my opinion that lost profits were  
8 appropriate in this case because August would have been able  
9 to make every one of those sales had Camtek not been selling  
10 the infringing Falcon system.

11 Q. And nothing that counsel has shown you or asked you  
12 about during the cross examination would cause you to change  
13 that opinion in any way?

14 A. No.

15 MR. GRUMBLES: Thank you. No further questions.

16 THE COURT: You may step down.

17 MR. GRUMBLES: Your Honor, I'm sorry, one quick  
18 thing. By agreement with counsel, I erroneously identified  
19 Plaintiffs' Exhibit 278 as Plaintiffs' Exhibit 270. So I  
20 would move for the admission of Plaintiffs' Exhibit 278.

21 MS. CHAPLIN: That's correct, Your Honor. No  
22 objection.

23 THE COURT: Be admitted.

24 Call your next witness, please.

25 MR. McDONALD: Your Honor, the plaintiffs rest.

1 THE COURT: All right. Members of the Jury, we'll  
2 take a 15-minute break, 15-minute recess. All rise for the  
3 jury.

4 **IN OPEN COURT**

5 **(JURY NOT PRESENT)**

6 THE COURT: Counsel.

7 MR. BANNON: Your Honor, would you like to take  
8 Rule 50 motions?

9 THE COURT: (Indicating.)

10 MR. BANNON: Your Honor, Camtek would like to move  
11 under Rule 50(a) on four grounds. First, that there is no  
12 literal infringement of the '6,298 patent; second, that  
13 there has not been sufficient evidence for infringement  
14 under the doctrine of equivalents of the '6,298 patent;  
15 third, that there has not been sufficient evidence for a  
16 finding of willful infringement; and fourth, on the issue of  
17 lost profits.

18 With regard to the first matter, Camtek requests  
19 judgment as a matter of law that the Falcon machines do not  
20 literally infringe claims 1 or 3 of the '6,298 patent.  
21 Infringement of a patent requires a finding that each and  
22 every limitation of that claim is present in an accused  
23 device.

24 Plaintiffs have failed to adduce evidence from  
25 which a reasonable juror could conclude that the Falcon

1 machines contain at least three elements. The Falcon does  
2 not contain a visual inspection device for visual inputting  
3 of a plurality of known good quality wafers during training;  
4 second, the Falcon does not contain a microprocessor having  
5 processing and memory capabilities for, quote, developing a  
6 model of a good quality wafer and comparing unknown quality  
7 wafers to the model; and third, that the Falcon does not  
8 contain an illuminator that strobes to provide short pulses  
9 of light during movement of a wafer under inspection based  
10 on the velocity of the wafer, as the Court has construed  
11 this claim.

12 For the same reasons Camtek does not practice the  
13 method recited in claim 3 of the '6,298 patent.  
14 Accordingly, judgment as a matter of law of no literal  
15 infringement of claims 1 and 3 of the '6,298 patent is  
16 proper.

17 Our second ground is the doctrine of equivalents  
18 and infringement under the doctrine of equivalents requires  
19 evidence that the accused device in the asserted claim  
20 limitation perform substantially the same function in  
21 substantially the same way to achieve substantially the same  
22 result. And plaintiffs have failed to adduce any evidence  
23 that the Falcon infringes claims 1 or 3 under the doctrine  
24 of equivalents on this basis.

25 Second, the law states that the doctrine of

1       equivalents cannot be applied to completely eviscerate the  
2       limitations of a patent claim. And since a die is not the  
3       same as a wafer and since the Falcon machines train with  
4       multiple die from a single wafer and create a model of a  
5       single die for inspection purposes, the doctrine of  
6       equivalents cannot be applied to find that Camtek  
7       equivalently infringes claims 1 or 3. Thus, Camtek believes  
8       that judgment as a matter of law of no equivalent  
9       infringement of claims 1 and 3 is proper.

10               On the third issue, willful infringement, willful  
11       infringement requires proof that Camtek acted with reckless  
12       disregard of the '6,298 patent. That means that Camtek  
13       acted despite an objectively high likelihood that its  
14       actions constituted infringement of a valid and enforceable  
15       patent or, two, actually knew or that it was so obvious that  
16       Camtek should have known that its actions constituted  
17       infringement of a valid and enforceable patent. The leading  
18       case on that, Your Honor, is In re Seagate Technology,  
19       497 F.3d 1360 at 1371. It's a Fed Circuit case from 2007.

20               Plaintiffs have failed to adduce sufficient  
21       evidence that a reasonable person in Camtek's position could  
22       have believed that the '6,298 patent was infringed, valid,  
23       and enforceable. Accordingly, judgment as a matter of law  
24       on the issue of Camtek's alleged willful infringement is  
25       proper.



1           Finally, on the issue of lost profits, Your Honor,  
2           the plaintiffs must prove, as you just heard for the last  
3           two days, that but for the alleged infringement there was a  
4           reasonable probability that they would have made Camtek's  
5           sales of the Falcon machines. I would cite to the Court's  
6           attention American Seating Company vs. USSC Group, 514 F.3d  
7           1262. Jump cite is 1269 to 70. It's a Federal Circuit case  
8           from 2008.

9           More specifically, plaintiffs must prove four  
10          factors under the Panduit case, that there was demand, there  
11          were no noninfringing substitutes, that plaintiffs had the  
12          capacity to make all of Camtek's sales, and the amount of  
13          the profit.

14          Camtek contends that plaintiffs have failed to  
15          adduce sufficient evidence that but for Camtek's alleged  
16          infringement there was a reasonable probability that they  
17          would have made all of the sales that Camtek made of the  
18          Falcon machines.

19          Camtek contends that the evidence adduced at trial  
20          is clear that the relevant market during the relevant time  
21          period consisted of additional suppliers such as RVSI and  
22          ICOS. In addition, plaintiffs have failed to adduce  
23          sufficient evidence as to each of the four Panduit factors,  
24          including demand for the patented feature of the '6,298  
25          patent. Accordingly, Camtek believes judgment as a matter

1 of law that plaintiffs are not entitled to lost profits is  
2 proper.

3 THE COURT: Thank you.

4 MS. HUGHEY: Thank you, Your Honor. August  
5 opposes Camtek's motion for judgment as a matter of law on  
6 infringement under the doctrine of equivalents and literal,  
7 willful infringement, and lost profits.

8 With respect to literal infringement, August has  
9 presented evidence from its expert, Dr. Mundy, that every  
10 single claim element has been met, including the three  
11 elements specifically raised by Camtek.

12 In addition, Elmer Gardiola and Roni Flieswasser  
13 and David Barnard also testified regarding the operation of  
14 Camtek's infringing product, providing evidence that those  
15 elements have been met. August provided a claim chart and  
16 that was used by Dr. Mundy to prove every single one of  
17 those was met.

18 With respect to claim 3 above, in addition to the  
19 evidence of the testimony, we have the manuals that  
20 demonstrate that claim has been met, including testimony by  
21 Mr. Gardiola about how the product was used. There also has  
22 been evidence -- included in evidence was the demo software,  
23 photos, manuals provided on the issue of infringement.

24 So with respect to literal infringement, all  
25 elements have been met.

1 Under the doctrine of equivalents there is  
2 evidence that the patented product -- that the infringing  
3 products work in substantially the same function and way and  
4 to get that same result.

5 With respect to willful infringement, again,  
6 August has provided sufficient evidence to meet its burden.  
7 It provided the evidence of the manuals. It provided  
8 evidence that Camtek was given knowledge of the patents and  
9 it continued to sell, and it provided evidence of  
10 Dr. Mundy's testimony on that point as well and Mayson  
11 Brooks as well talked about the fact that what August was  
12 doing was publicly available at trade shows starting in  
13 2000, well before Camtek came on the market.

14 In addition, the parties agreed that certain  
15 witnesses on the willfulness issue would not be raised  
16 necessarily in August's main case and August has a right to  
17 call DeRosa and Amit on the issue of willfulness at this  
18 point.

19 With respect to the final issue of lost profits,  
20 August has provided sufficient evidence that with a  
21 reasonable probability it would have made those sales but  
22 for Camtek's infringement.

23 We heard the evidence of Mayson Brooks and saw the  
24 documents that he provided saying that but for Camtek's  
25 infringement August would have made every single sale. We

1 also heard testimony from Elmer Gardiola that the only two  
2 competitors he considered as having a source would have been  
3 August and Camtek. We also heard testimony from Barnard.

4 In addition, we looked at Fran McCloskey's  
5 testimony where she was able to look at both Camtek and  
6 August documents and in her opinion August would have made  
7 those sales but for Camtek's infringement.

8 We also saw evidence that RVSI and ICOS were not  
9 competitors in the market and would not have been able to  
10 make those sales and there was demand for the patented  
11 features of the product, as demonstrated by the parties'  
12 quotes to customers.

13 MR. BANNON: May I respond briefly, Your Honor?

14 THE COURT: Very briefly.

15 MR. BANNON: It appears that counsel has stated  
16 that they have not presented any evidence on willful  
17 infringement and that there was some sort of order that they  
18 did not have to in their main case. Plaintiffs have to  
19 prove willful infringement by clear and convincing evidence  
20 and I think they plan on presenting that issue to the jury.  
21 I think counsel is confusing the issue of inequitable  
22 conduct, which the Court has bifurcated. And I agree that  
23 basically no evidence of reckless disregard has been  
24 presented to this Court on the issue of willful  
25 infringement.

1           On the issue of literal infringement and doctrine  
2       of equivalents, certainly there has been no evidence that  
3       the Falcon develops a model of a good quality wafer and  
4       compares unknown quality wafers to that model. Instead the  
5       issue or what has been presented to the Court is that the  
6       Falcon creates a model of a die and that die is checked  
7       against the die on the wafer.

8           Thank you.

9           THE COURT: All four motions are denied.

10          Are you ready to proceed with your case?

11          MR. BANNON: Yes, Your Honor.

12          THE COURT: We'll take ten more minutes.

13          (Recess taken at 2:55 p.m.)

14                   \*    \*    \*    \*    \*

1 (3:15 p.m.)

2 IN OPEN COURT

3 (Without the jury)

4 THE COURT: Okay. We're out of the hearing of the  
5 jury. The motion has been filed. Let's hear argument on it,  
6 brief argument.

7 MS. HUGHEY: Thank you, your Honor.

8 I believe August's brief has adequately laid out  
9 the issue that as a general rule the defendant's patent is  
10 irrelevant to the issues in the case and should not be  
11 admitted to the jury because it's prejudicial, it's  
12 confusing, and it's unnecessary.

13 Now, Camtek correctly cites to several cases that  
14 have allowed such evidence, but it's only in a very limited  
15 circumstance which does not apply in this case. In this case  
16 we have an earlier issued patent that Camtek looks to rely on  
17 to argue that it does not willfully infringe a later patent  
18 or that there is not infringement under the doctrine of  
19 equivalents.

20 With respect to willfulness, the only time a  
21 defendant's patent is permitted is if defendant is offering a  
22 later-issued patent as evidence of its attempts to design  
23 around the patent-in-suit, and specifically, the cases that  
24 allow that are ones where the patent-in-suit was actually  
25 cited during the prosecution of the later-issued patent. In

1       this case we don't have that.

2               First of all, Camtek is not arguing that it  
3 attempted to design around the August patent. Instead it's  
4 arguing independent design, independent invention.

5               Second, its patent is not one that was cited  
6 during -- that cited the patent-in-suit during prosecution.  
7 The patent-in-suit issued after the InspecTech patent.

8               As a second issue with respect to the doctrine of  
9 equivalents, the doctrine of equivalents cases are along the  
10 same lines. If a later-issued patent issued, arguably it has  
11 some kind of boundaries that maybe don't apply for the  
12 doctrine of equivalents. Here again we have an earlier  
13 patent they're trying to rely on that has no relevance to the  
14 doctrine of equivalents.

15              Additionally, even if those applied, the fact of  
16 the matter is Camtek has made up this argument that it's  
17 going to help its willfulness case and its infringement case  
18 probably sometime last night. This is not something that  
19 Camtek has identified to August as a contention.

20              With respect to its interrogatories, when it was  
21 asked to identify why it did not willfully infringe the  
22 patent, it never pointed to InspecTech patent as evidence of  
23 that.

24              And likewise, with respect to the doctrine of  
25 equivalents, this is the first time I've heard that Camtek

1 was planning to rely on that patent. It was not identified  
2 during discovery as an issue, and in fact if it were, then  
3 August would have had the ability to do discovery on that  
4 patent to determine whether or not the infringing device was  
5 also covered by that patent and that would be the only reason  
6 it would be relevant.

7 So, to summarize, as a general rule, patents of  
8 defendants not admissible because prejudicial, suggesting  
9 that a patentee has a right to practice its patent even if  
10 it's infringing someone else's, which is not the law and I  
11 don't think they're going to disagree that's not the law.  
12 Very, very narrow, limited circumstances to be allowed, not  
13 relevant in this case.

14 Thank you, your Honor.

15 THE COURT: All right. Convince me that Plaintiff  
16 is wrong. Tall order.

17 MR. LIANG: May it please the Court.

18 Counsel started off with timing. I'll address  
19 that -- oh, I'm sorry. Counsel ended with timing and I'll  
20 address that first in terms of notice.

21 The Court's September 29th, 2008 order required  
22 Plaintiffs to disclose its objections.

23 THE COURT: Let's move on past that. That's not  
24 the issue. You've got to convince me that they're wrong and  
25 procedurally we're not going to deal with that issue right



1 now.

2 MR. LIANG: Okay. Well, with respect to willful  
3 infringement, Camtek's state of mind is a key factor in  
4 determining whether it willfully infringed the '6,298 patent,  
5 and in the words of the Federal Circuit, reckless disregard  
6 is the standard.

7 And Camtek's patents are relevant to its  
8 independent development -- and Counsel mentioned that in her  
9 argument -- and whether Camtek copied Plaintiffs' patents.  
10 And Plaintiffs allege that Camtek willfully infringed by  
11 copying its patented technology and Camtek's patents are  
12 relevant to show that it did not act willfully and it  
13 independently developed these technologies. This particular  
14 patent that is raised was filed 15 months before Plaintiffs'  
15 patent.

16 Regarding the doctrine of equivalents, under the  
17 doctrine of equivalents Plaintiffs have to show that the  
18 Falcon machines were insubstantially different from the  
19 claims of the asserted patent, the '6,298 patent, and  
20 Camtek's patent is relevant to show the differences between  
21 the Camtek machine and the Plaintiffs' patent, that it was  
22 substantial and therefore was awarded a patent from the  
23 USPTO.

24 That's all I have, your Honor.

25 THE COURT: All right. Thank you.

1           Nothing further? Plaintiff's motion is granted.

2           All right. Let's get the jury.

3           MR. BANNON: Your Honor, very quickly, there are  
4 two other patents Camtek has -- well, two or three patents.  
5 Two of them -- or at least one of them is a later-filed  
6 patent and I'm just wondering whether your ruling would apply  
7 to that one as well. Two of the patents go towards the 3D  
8 capability that you've heard a lot of testimony about. One  
9 is issued and one is pending. I think you heard earlier  
10 about CCS, LTS, and those patents deal with bump inspection,  
11 which I think you've heard a lot of testimony that customers  
12 liked Camtek's machine a lot I think because of this  
13 technology and 3Di wasn't very popular. I think they only  
14 sold three or five machines.

15           THE COURT: Counsel? It's your motion. Go ahead.

16           MS. HUGHEY: August would make the same motion with  
17 respect to those patents as well, the same issues.

18           THE COURT: You did not address those.

19           MS. HUGHEY: They weren't on the list of exhibits  
20 for today, so we can brief those as well if you would like.

21           THE COURT: No, since it would be the same cases.  
22 You don't know?

23           MR. McDONALD: We have to take a look at those  
24 patents. Last night we were focusing on the patent that was  
25 brought up -- he's saying there are differences. We haven't

1 had a chance to look at them from that perspective.

2 MR. BANNON: These patents were cited in the very  
3 beginning of the case. I think they were in the first  
4 document production.

5 THE COURT: Okay. Let's do it right. Let's brief  
6 it.

7 MS. HUGHEY: Yes, your Honor. Thank you.

8 THE COURT: All right.  
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1 (Discussion off the record between the  
2 Court and the court reporter)

3 IN OPEN COURT

4 THE COURT: We're having a realtime problem --  
5 (Laughter)

6 THE COURT: -- so it'll take a few minutes.  
7 (Brief recess)

8 \* \* \* \* \*

9 (3:35 p.m.)

10 IN OPEN COURT

11 (Jury enters)

12 THE COURT: Please be seated. Call your first  
13 witness, please.

14 MR. BANNON: Your Honor, Camtek calls as its first  
15 witness, Moshe Amit.

16 **MOSHE AMIT, DEFENDANT'S WITNESS, SWORN**

17 THE COURT: Good afternoon.

18 THE WITNESS: Good afternoon, sir.

19 THE COURT: Would you state your true and correct  
20 name for the record, please, spelling it for the record.

21 THE WITNESS: My name is Moshe Amit.

22 THE COURT: Would you spell your first --

23 THE WITNESS: Yes. M-O-S-H-E, and then A-M-I-T.

24 THE COURT: You may inquire.

25 MR. BANNON: Thank you, your Honor.

**DIRECT EXAMINATION**

BY MR. BANNON:

Q. Mr. Amit, are you presently employed?

A. No, I retired last January from Camtek.

Q. Okay. And prior to your retirement, what was your position at Camtek?

A. I was -- between 2001 and March of 2006, I was the former CFO of Camtek, and between March 2006 until my retirement in January 2008, I did some special assignment and special projects for Camtek as senior management member.

Q. You said you were the CFO of Camtek, is that right?

A. Yes.

Q. Okay. Are you a U.S. citizen, sir?

A. Yes, I am a U.S. citizen.

Q. Since when?

A. Since 1992.

Q. How long had you lived in the United States before becoming a citizen?

A. This was for seven years. I came over to the United States in 1985, and in 1992 I became a U.S. citizen.

Q. Do you have a family, sir?

A. Yes. I have two children and one grandchild.

Q. How old are your children?

A. My eldest son is 36 year old. He live here in Pasadena, California. He's doing his research fellowship in synthetic

1 biology in Cal Tech Research Institution.

2 Q. Do you have a younger son as well?

3 A. Yes. The younger son, he's in Tel Aviv. He's working  
4 for a robotics company in the business management area.

5 Q. And how old is he?

6 A. He's 34 years old.

7 Q. And how old is your grandchild?

8 A. Two years.

9 Q. Does your grandchild live here in the United States?

10 A. Yes.

11 Q. Now, where did your children go to school, sir?

12 A. Well, the older one graduated from Cornell University in  
13 New York, then did his master degree and Ph.D. degree in  
14 Weitzman Institution in Israel. The younger son graduated  
15 from Lehigh University in Pennsylvania and then did his MBA  
16 degree at Sloan, which is the business school of MIT in  
17 Massachusetts.

18 Q. Would you explain to the jury, sir, what your  
19 educational background is?

20 A. Yes. I graduated from Technion in Israel. I have a  
21 degree in industrial engineering and management. I have also  
22 did all the classes for my master degree, but I did not  
23 completed the thesis.

24 Q. What is the Technion?

25 A. Technion is like, you know, the best engineering school

1 in Israel. It's like the MIT of Israel, if I may define it  
2 this way.

3 Q. Okay. I'd like to talk a little bit about your work  
4 history, sir.

5 A. Okay.

6 Q. Can you describe or briefly describe your work history  
7 after graduating from Technion?

8 A. Yes. I graduated in 1969 and then I work for four years  
9 for a consulting company. Then for 11 years I manage a  
10 construction company. This was between 1973 and 1984.

11 In 1985 I came over to United States. I set up an  
12 engineering company for engineering services called PCE,  
13 which stands for Precision Circuits Engineering, and provided  
14 some services to the printed circuit board industry.

15 Later on in -- later on in 1988, some of the  
16 services were also the coordination of Camtek in United  
17 States.

18 In 1994, I returned back to Israel.

19 Q. Now, I'd like to talk a little bit about the history of  
20 Camtek. Can you tell the jury when Camtek was started?

21 A. Camtek was started in 1987 in Israel.

22 Q. And what was the business of Camtek in 1987?

23 A. At that time Camtek developed, manufactured and sold  
24 semi-automated optical inspection machine which was called  
25 V-Scan, V like Victor, S, Scan.

1 Q. Okay. And what was V-Scan used for?

2 A. The V-Scan inspected printed circuit board in the  
3 following way:

4 The first step was to generate good reference, or  
5 as we call it, golden image, and typically we did it by  
6 scanning artwork, which is the film that's being used to  
7 print the board itself. This is how we create the golden  
8 image.

9 Then the board itself was scanned and a comparison  
10 was done more like -- the board was scanned. It was in a  
11 frame, on a frame to frame, frame after frame, and then there  
12 was a comparison of the scan frame over the reference frame,  
13 and the deviation would display in different color and the  
14 operator could identify what is a defect and what is not a  
15 defect, what is a real defect and what is a false defect,  
16 et cetera.

17 Q. Now, you used the term "golden image."

18 A. Yes.

19 Q. What did you make a golden image of?

20 A. As I mentioned, the golden image was done from the  
21 artwork, the film that used to print the board itself. So  
22 when the film was scanned, the machine memorize the image of  
23 the film and use it as a good reference. We -- you know the  
24 terminology in the industry. It was a golden image or golden  
25 board.



1 Q. So was it a golden image of a PCB?

2 A. Yes. This was a golden image of a printed circuit  
3 board, of a specific layer that we wanted to inspect in a  
4 later stage.

5 Q. Okay. And I believe you said the V-Scan was a  
6 semiautomatic inspection device, is that right?

7 A. Yes. Yes.

8 Q. Okay. When did Camtek first introduce a fully automatic  
9 optical inspection device?

10 A. This was in 1994 and it was a kind of an upgrade of the  
11 V-Scan to fully automated machine. We call it AOI, automated  
12 optical inspection.

13 This structure was very similar like the V-Scan.  
14 It was like a work bench that the operator could see and scan  
15 the board itself. The generation of the reference was quite  
16 the same, but using a film or artwork typically. The  
17 scanning of the board itself this time on the V-Scan was done  
18 in a continuous mode, not frame by frame, and the automation  
19 process was in a way that the machine at the end of the  
20 scanning process, the machine just moved to the location  
21 where the deviation were found, just to the location. In  
22 other words, if there was a single defect found on the board,  
23 the machine just moved right to the spot where the deviation  
24 was found and then it was displayed on a monitor and the  
25 operator can verify whether it is a real defect or a false

1 defect.

2 Q. So did you say the name of that device was the 2V-20?

3 A. 2V-20, 2V dash 20.

4 Q. And did you also say that that was introduced in early  
5 1994, right?

6 A. Yes. Yeah, I think it was February 1994.

7 Q. Now, how did the Camtek 2V-20 compare to other optical  
8 inspection devices from that 1994 time period?

9 A. Yeah. Well, we tried to address the 2V-20 to the niche  
10 of the small PCB manufacturer, which we call low-volume, high  
11 end.

12 You have to remember -- I'd like to tell to the  
13 jury that there was a few giants, AOI manufacturers, like  
14 Opritech and Orbot and KLA that used to sell AOI machine to  
15 the high-volume PCB manufacturer with a tack price of half a  
16 million dollar or so. This price, a small PCB shop, you  
17 know, cannot afford, so we address our equipment with a tack  
18 price of \$120,000 only to the market of the small user. I  
19 say high end because the level of complexity of the board was  
20 such that they really need AOI machine to process a board.

21 Now, what was typical about this V-Scan machine  
22 was, first of all, the light construction and then, you know,  
23 the tack price, and yet it was operated by very powerful  
24 software, our operating software, that created altogether a  
25 big competitive advantage for Camtek.

1 Q. Now, can you explain to the jury what the main  
2 components other than software were for the 2V-20 machine?

3 A. Yes. We had their vacuum table which the board would  
4 held. Then there was a camera, an optical device, a monitor  
5 to display the defects and small electronic cabinet.

6 Q. And in 1995, how large of a company -- or 1994, 1995,  
7 how large of a company was Camtek?

8 A. When I started with Camtek, this was late 1994, early  
9 1995. We were about 15 employees.

10 Q. And what was your position at Camtek at that time?

11 A. I was in charge of Camtek worldwide operations,  
12 including sales, marketing and customer support.

13 Q. Did there come a time at Camtek when you began focusing  
14 on marketing your products to large manufacturers?

15 A. Yes. This was only 1995 after I believe we were kind of  
16 well recognized in the PCB market, and with the introduction  
17 of advanced electronic components, we felt that this is about  
18 the time that we will go head on with the larger  
19 manufacturer.

20 And again, on the same platform of the 2V-20, we  
21 develop the -- a machine model which we call it Orion, and  
22 the Orion was able to process, to do the inspection much  
23 faster speed, much more accurately, and for us it was really  
24 success.

25 In 1999 we had some I believe 23 million in revenue

1 and in year 2000 we had \$53 million of revenue. This was  
2 more than double and this was more or less what enabled us to  
3 do our IPO in NASDAQ in July of year 2000.

4 Q. So 2000 was a big year for Camtek.

5 A. Yes.

6 Q. Okay. I'd like to switch now to a company called  
7 InspecTech.

8 Did there come a time when Camtek got involved in  
9 the automatic optical inspection business for semiconductor  
10 wafers?

11 A. Yes. With the money that we raised, you know, during  
12 our IPO and becoming public company, we were seeking an  
13 opportunity to grow and, you know, searching for a new growth  
14 engine, and we acquire InspecTech, which was like 33  
15 employees, in the northern part of Israel. They were  
16 involved in, again, AOI machine of the semiconductor, or I  
17 would say the backend sector of the semiconductor industry.  
18 And for us this was quite natural, you know, to try to find a  
19 growth engine in this niche.

20 Q. Now, you said that InspecTech had 32 or 33 employees.  
21 Did it have any products at that time?

22 A. Yes. InspecTech has three products, two of them already  
23 in the market, the first one called KIS. This was for kerf  
24 inspection. The second was called BIS. This machine did  
25 wafer inspection and bump inspection, 3D. And the third one

1 which was under development was called the WIS, W-I-S, and  
2 this machine was planned to do all the three operations: the  
3 kerf inspection, the wafer inspection, and the bump  
4 inspection.

5 Q. Now, can you explain to the jury what some of the  
6 reasons were for Camtek's acquisition of InspecTech?

7 A. Yes. We believed that we got some good and valuable  
8 assets, you know, together with the acquisition of  
9 InspecTech.

10 Number one that I mentioned before, we got an  
11 access to a new market, an opportunity to develop a new  
12 growth engine.

13 Number two, we acquire with the company 32  
14 employees. Most of them are R&D employees, which also are,  
15 you know, an asset.

16 InspecTech also had 22 field installation, most of  
17 them of the KIS and the BIS, which again, this is an access  
18 to the market.

19 PCB had proven 3D technology which we were very  
20 interested to have --

21 Q. Do you mean InspecTech, sir?

22 A. InspecTech.

23 Q. You said PCB.

24 A. Oh, sor -- yeah. No. InspecTech had -- I repeat.

25 InspecTech had 3D technology which we were very interested to

1 have for our machines in the HDI, the high-density  
2 interconnect market, which is the highest end of the PCB  
3 market. They have there also a 3D requirement on bumps,  
4 which is on the substrate.

5 And finally, we acquired with InspecTech some  
6 patents that belonged to InspecTech.

7 Q. Now, was Camtek satisfied with the InspecTech  
8 acquisition?

9 A. I believe overall, I think that we were very satisfied  
10 with the acquisition and there are records, you know, in the  
11 years 2004, '5 and '6 that kind of showed that.

12 Q. Now, were you selling the KIS and the BIS or the WIS in  
13 2004, '5 and '6?

14 A. No. No. When we acquire InspecTech, we realized that  
15 the current product -- perhaps they were good enough for R&D  
16 purposes, prototyping, but they were not stable enough to  
17 meet the tough up-time requirements of the semiconductor  
18 industry, so we knew that here we need to create a synergism  
19 and to combine the accumulated know-how and knowledge of  
20 Camtek together with all the knowledge that we acquired with  
21 InspecTech.

22 So, what we did is, we set it as a first priority  
23 and we enter into very extensive mode of R&D work, and we did  
24 it by assigning the best of our R&D people to InspecTech  
25 group in order to contribute from their knowledge to the

1 InspecTech product.

2 Q. Now, I know you were the CFO and you weren't acting as  
3 an engineer, but other than taking the PCB R&D engineers and  
4 putting them on this project, did you do anything else to  
5 improve the InspecTech products?

6 A. Well, at that time, yes, I was already the CFO, so I'm  
7 really not familiar with all the technical people, but what I  
8 know from the standpoint at least of the PCO, that the  
9 first -- the initial focus was to -- to make a new machine, a  
10 new model with new artwork from scratch, I mean, not to rely  
11 on anything that we got with InspecTech as far as the  
12 operating artwork. We also, as I mentioned before, thought  
13 that the power of the artwork was always a unique -- one of  
14 Camtek's uniquenesses and a competitive edge.

15 Q. Just to help the jury, when you say "artwork," are you  
16 referring to software?

17 A. Software. Sorry. I'm sorry. I'm a little bit confused  
18 with the vocabulary. I mean the software. The operating  
19 software is one of Camtek's uniquenesses.

20 To the best of my knowledge, on the first model of  
21 the Falcon, which we introduce in July of 2003 at SEMICON  
22 West -- this was the first introduction of the Falcon -- most  
23 of the hardware remained the same hardware. This came from  
24 InspecTech, but as I mentioned, the software was totally new,  
25 totally Camtek's software, which we did it from scratch.

1 Q. Okay. You don't mean to say that there were no changes  
2 to any of the components, the hardware components --

3 A. No, I believe -- I know at least, you know, the covers  
4 was changed perhaps, you know, something which was to do with  
5 the illumination was different than the one that we acquire  
6 for InspecTech, but I would say the mechanics, the mechanical  
7 assembly, vacuum devices or whatever, everything were more or  
8 less the same as we acquired from InspecTech.

9 Q. And that was specifically with respect to the BIS, or  
10 both the BIS and the KIS?

11 A. It was specifically for the -- for the BIS. We didn't  
12 see a real potential to continue to develop at that time --  
13 we set a first priority on the development of the BIS, which  
14 we called the Falcon later on, and not the kerf inspection.

15 Q. Now, did you subsequently come out with a Falcon model  
16 that did kerf inspection in addition to --

17 A. Yes. Yes. Yeah, this was in the later stage that we  
18 did also the kerf inspection with the Falcon.

19 Q. And what was the name of that product?

20 A. I think it was the Falcon PD, if I remember it well.

21 Q. What does PD stand for?

22 A. This is post dicing.

23 Q. Now, how much did Camtek invest in research and  
24 development to bring the Falcon to market?

25 A. I believe from the time we acquire InspecTech till the



1 first introduction of the Falcon at SEMICON West in July of  
2 2003, we invested about \$11 million in R&D.

3 Q. Now, I'd like to switch topics again to when Camtek  
4 first learned about the '6,298 patent, okay, and that'll be  
5 my first question. When did Camtek first learn about the  
6 '6,298 patent?

7 A. This was I believe in -- sometimes in February of 2005  
8 when we receive a letter from August, from lawyers of August,  
9 I believe, Mr. John Vasuta.

10 MR. BANNON: Okay. Can we pull up Defendant's  
11 Trial Exhibit Number 37?

12 And, your Honor, I don't believe there's any  
13 objection. This is just Defendant's counterpart to the  
14 plaintiff's exhibit that was already admitted.

15 THE COURT: Any objection?

16 MR. McDONALD: No objection, your Honor.

17 THE COURT: Be admitted.

18 BY MR. BANNON:

19 Q. Let me see if I can help you out, Mr. Amit. In the  
20 event you'd rather look at the physical paper documents --

21 A. I prefer physical, because this is too small for me.

22 Q. Fair enough.

23 A. Okay. Now I can see it.

24 (Pause)

25 MR. BANNON: Your Honor --

1 THE COURT: You have to keep your voice up.

2 MR. BANNON: Your Honor, I will not be using 717.

3 THE COURT: All right. Thank you.

4 BY MR. BANNON:

5 Q. Now, Mr. Amit, you referred to a letter from Mr. Vasuta.

6 Do you have Defendant's Trial Exhibit number 37 before you?

7 A. Yes. This is Number 37.

8 Q. Okay. And do you see that letter dated February 1st,  
9 2005?

10 A. Yes.

11 Q. And it's to Mr. Rafi Amit?

12 A. This was addressed to Mr. Rafi Amit, our chairman.

13 Q. Okay. Any relation to you, sir?

14 A. Yes. He is my brother.

15 Q. Now, is this the letter that you just referred to that  
16 you received from Mr. Vasuta?

17 A. Yes.

18 Q. And this was Camtek's first notice of the '6,298 patent,  
19 is that right?

20 A. Yes.

21 Q. Okay. Was that the first letter that you received from  
22 August about their patents?

23 A. No. We -- about the patent in general?

24 Q. About any of their patents.

25 A. Yes. Some four months earlier we receive a letter --

1 this was in November, I believe, of 2004 -- received a letter  
2 from Mr. Stan Piekos, which is the CFO of August at that  
3 time, and the letter was related to August's patent number  
4 '666.

5 MR. BANNON: Okay. Can we pull up Defendant's  
6 Trial Exhibit Number 72, please?

7 And, your Honor, I don't believe there's any  
8 objection to this document --

9 THE COURT: Well, Counsel, don't --

10 MR. BANNON: Okay.

11 THE COURT: Let's find out.

12 MR. McDONALD: He's correct. No objection.

13 THE COURT: Be admitted.

14 MR. BANNON: Thank you, your Honor.

15 BY MR. BANNON:

16 Q. Now, is this the letter that you just referred to, sir?

17 A. Yes. This is Exhibit 72.

18 Q. Okay. And it's dated October 6th, 2004 --

19 A. Yes.

20 Q. -- correct? Now, this letter was not about the  
21 patent-in-suit that we're here about today, right?

22 A. No, this is about another patent, '666.

23 Q. And what did Camtek do when they got this letter from  
24 Mr. Vasuta?

25 A. Well, in the letter, Mr. Piekos claimed that he believed

1       that Camtek infringed this patent and this is based on some  
2       information that they have, and he ask us to respond to this  
3       claim.

4       Q.     And what did you do?

5       A.     Well, first of all, you know, I show this letter to our  
6       team in the microelectronic division to review it, and then  
7       they also met with our patent lawyer in Tel Aviv, Adi Levit,  
8       and they reach the conclusion -- first internally at Camtek  
9       and then it was supported by Adi Levit -- that we do not  
10      infringe this patent.

11             So, we draft our answer, our reply to August, at  
12      least according to my view in a very, very good face, in a  
13      very open way, almost in a friendly way in the way that we  
14      give them a very detailed explanation as to how our  
15      machine -- how our machine works and why we do not infringe  
16      their patent, and we mailed this letter to Mr. Piekos.

17      Q.     Now, sir, we're not going to put it up on the screen,  
18      but can you refer to Defendant's Trial Exhibit number 74,  
19      please?

20             THE COURT:   You know, we can move past -- I haven't  
21      gotten involved in this, but my understanding is most of  
22      these exhibits are not objected to. You already know which  
23      ones they're objecting to.

24             MR. BANNON:   That's correct.

25             THE COURT:   Put it up on the screen. Let's move --

1 MR. BANNON: Okay. Thank you, your Honor.

2 THE COURT: It stops -- it's herky-jerky direct  
3 examination.

4 MR. BANNON: Fair enough.

5 THE COURT: Let's get it up.

6 MR. BANNON: Let's put Defendant's Trial Exhibit  
7 Number 74 on the screen, please.

8 THE WITNESS: Yes.

9 BY MR. BANNON:

10 Q. Do you recognize Exhibit 74, sir?

11 A. Yes. This is our reply dated November 4 (sic), 2004.

12 Q. Who prepared that response?

13 A. The reply was prepared by our division team, the  
14 microelectronic division. This is the division that produce  
15 the Falcon. And we had the chairman, Rafi Amit, sign on this  
16 letter.

17 Q. Now, did Mr. Piekos ever respond to this letter from  
18 your chairman?

19 A. No, Mr. Piekos never respond. The next response that we  
20 got from August was the letter that I mentioned earlier that  
21 came from Mr. John Vasuta, the lawyer of August, which,  
22 again, he thank us for the detailed answer. Apparently it  
23 was not satisfactory. He requested more information and on  
24 the second page he indicated another patent. This is the  
25 patent which we are here, the '6,298, which again, also in

1 this patent, they believe that we infringe this patent.

2 Q. So that was Trial Exhibit Number 37 that we looked at  
3 earlier?

4 A. Yes.

5 Q. Okay. And did August ever pursue the '666 patent any  
6 further?

7 A. Not that I know.

8 Q. When August identified the second patent, the  
9 patent-in-suit here, what did you do about that?

10 A. Well, what can I tell you? My first impression -- I had  
11 a very bad impression, you know, from this letter, you know,  
12 after the good faith and the openness that we did in our  
13 reply. It's like, you know, I felt that there was some  
14 perhaps hidden intention or hidden motivation on August's  
15 side, you know, to draft this series of letters.

16 Regardless my feeling, we did more or less the same  
17 process. We call our -- first of all our microelectronics  
18 team to review the patent, to review the '6,298 patent, to  
19 compare it with the way -- how we operate with the Falcon.

20 Again, we seek the advice of our patent law firm in  
21 Tel Aviv, Mr. Adi Levit, and once again we came with a  
22 crystal clear conclusion that we do not infringe also the  
23 '6,298 patent.

24 The only change at this time, we preferred to send  
25 August a very short answer. We say thank you for the letter,

1 we check it thoroughly. We think -- our conclusion is that  
2 we do not infringe. However, if you believe that we do, by  
3 all means provide us with detailed information as to what are  
4 the specific, what is it exactly that we infringe, how do you  
5 believe our machine works and what exactly does it infringe  
6 your patent, and then we will be glad to discuss it with you,  
7 to meet with you, whatever is required to do it in an open  
8 way.

9 Q. Did Mr. Vasuta ever respond to that letter with the  
10 basis for their claims?

11 A. No. But we did additional move, additional step on our  
12 side. At the same time -- and this was the initiative of our  
13 CEO --

14 Q. What did you do?

15 A. Yeah. We decided not to take any risk. And since, you  
16 know, a legal opinion from lawyers in Tel Aviv will not be  
17 applicable in the U.S. court, so we decided to seek for  
18 independent legal opinion from a reputable U.S. law firm.  
19 And I clearly remember the language that our CEO used, and he  
20 said: We don't want to take any risk. I want to obtain a  
21 legal opinion. If the legal opinion, independent legal  
22 opinion, will find that we infringe this patent, then we have  
23 to stop the production and the selling of the Falcon.

24 So, first of all, I want to do it and I want to  
25 play it safe, so we approach our corporate lawyer -- his name

1 is Lior Aviram -- using his network and to recommend on a  
2 U.S. patent firm that will be able to prepare an independent  
3 legal opinion.

4 Q. And did you retain such a firm?

5 A. Yes. The recommendation was on Brown Raysman firm in  
6 New York.

7 Q. All right.

8 MR. BANNON: Okay. Can we pull up Defendant's  
9 Trial Exhibit Number 283, please?

10 Q. Have you seen Exhibit 283 before, sir?

11 A. Yes. I see it only on the screen. I cannot find it in  
12 the binder. 283?

13 Q. Defendant's Trial Exhibit 283. Have you seen that  
14 document before, sir?

15 A. Yes. Yes. This document is an e-mail that's send by  
16 our -- Michael Lev, which was in charge of our -- at that  
17 time our IP in Camtek, and this was most like a summary of  
18 the meeting from -- dated May 25 of 2005 which took place in  
19 Tel Aviv together with Brown Raysman lawyer there.

20 Q. So was that the first meeting with Brown Raysman?

21 A. This was the first meeting -- this is what you would say  
22 the kickoff meeting to prepare the independent legal opinion.

23 Q. And that was about two months before the lawsuit was  
24 filed?

25 A. Yeah. I believe the lawsuit was filed in July. This



1 was during SEMICON West.

2 Q. Now, did Brown Raysman tell you how long it would take  
3 to do their analysis?

4 A. Yes. They say that they believe that it will take them  
5 at least six to eight weeks after they will receive all the  
6 necessary documentation and information from our side.

7 Q. Now, who from Brown Raysman performed the analysis?

8 A. They nominated a team, which was I believe Frank DeRosa.  
9 He was the co-chairman in Brown Raysman, and he was assisted  
10 by another lawyer named Robert Schaefer.

11 Q. Now, what kind of information was made available to  
12 Mr. DeRosa and Mr. Schafer by Camtek to allow them to do  
13 their analysis?

14 A. Okay. There was some information that they will be able  
15 to, you know, obtain themselves, like all the prosecution  
16 history and prior art, research or whatever. They had done  
17 it by themselves. What we have to come up with, all the  
18 documentation, all the manual, all the explanation as far as  
19 how the machine works, how the machine operates, how we  
20 instruct, you know, the operator in the field, et cetera,  
21 et cetera. This is all the information that we put together  
22 and we send it to them.

23 On the top of it, we thought that it will be much  
24 better if this team or one of these team will come over to  
25 Israel to see the machine, to inspect the machine, to get a

1 firsthand impression of how the machine works, and of course,  
2 you know, to discuss in a very open way with each and every  
3 R&D engineer that was involved in whatever, the software  
4 code, the algorithm, the physics, the electronics of the  
5 machine.

6 Q. Now, was it Mr. Schafer that came over to Israel?

7 A. Yeah. It was sometime in August Mr. Schafer came over.  
8 He spent like I believe two or three days altogether. I  
9 don't recall right now exactly. And I instruct our people to  
10 cooperate with him like, you know, in a very open way, just  
11 to open everything for him.

12 Q. Did he speak to any of your engineers?

13 A. Yes, he spoke to all of our leaders in the R&D team.

14 Q. Did he see the Falcon in operation?

15 A. Yes. Yes. Yes. We demo'd the Falcon for him.  
16 Assigned a special machine just for the demo purposes for  
17 him.

18 Q. Did he ask to see anything that you did not provide to  
19 him?

20 A. No. I mean, you know, everything was open. There was  
21 no question about, you know, to provide or not provide. You  
22 know, everything was open to him.

23 Q. You wanted him to see everything, right?

24 A. Yes, absolutely.

25 Q. Now, did Mr. Schafer express any opinions at that time

1 on whether or not Camtek might have an infringement problem?

2 A. Well, in the end of his visit just before, you know, the  
3 taxi came to take him back to the airport, I just met with  
4 him for a courtesy, whatever, and asked him what was his  
5 first impression from the study, and he told me that he  
6 believed that we have some very good points to claim that we  
7 do not infringe the patent.

8 Q. Now, did you ever get an oral opinion from Mr. DeRosa?

9 A. Yeah. A few days after that, I believe, after the --  
10 did all the summaries in New York, they initiated a  
11 conference room -- a conference call, and during this  
12 conference call we got notified by DeRosa that they think or  
13 they believe or their opinion is going to be that we do not  
14 infringe this patent.

15 Q. Did you ever get a written opinion from Brown Raysman?

16 A. Yes. This was in September. We got a 25-page written  
17 opinion explaining that we do not infringe.

18 MR. BANNON: Let's pull up Defendant's Trial  
19 Exhibit 269, please.

20 Q. I have Defendant's Trial Exhibit 269 before you, sir?

21 A. Yes. This is a written opinion that we got from Brown  
22 Raysman.

23 Q. And that's the opinion you just referred to, correct?

24 A. Yes.

25 Q. Did you read the opinion when you got it?

1 A. Yes, I read the opinion and immediately after that I  
2 forward it to our team in the microelectronics division,  
3 first of all to review that all the technicality, all the  
4 technical descriptions that are being written in the opinion  
5 are true and correct and comply with the way the Falcon is  
6 being operated.

7 I also forward this opinion to our lawyers in  
8 Tel Aviv, the patent lawyer, Adi Levit, and the corporate  
9 lawyer, Lior Aviram, to review it for all this kind of -- I  
10 don't know, legal language that's in it.

11 Q. Well, were there any conclusions in the opinion that  
12 either you or your lawyers or anyone else from Camtek  
13 believed were incorrect?

14 A. No.

15 Q. Did anyone disagree with any of the opinions or  
16 conclusions that were reached by Mr. DeRosa?

17 A. No.

18 Q. Did Camtek rely on Mr. DeRosa's opinion in deciding to  
19 go forward with sales of the Falcon in the United States?

20 A. Yes. Based on this opinion, we decided to continue with  
21 the production and the selling of the Falcon.

22 Q. Now, if Mr. DeRosa had concluded that there was  
23 infringement of the '6,298 patent, would Camtek have  
24 continued selling the Falcon in the United States?

25 A. No way. As I mentioned before, this was a clear

1 instruction of Rafi Amit, the chairman, and probably we have  
2 to find a different way, you know, to do it in a way that we  
3 do not infringe.

4 MR. BANNON: Your Honor, I'd like to move in  
5 Defendant's Exhibits 74, 269 and 283 that were used in the  
6 witness's testimony.

7 MR. McDONALD: No objection, your Honor.

8 THE COURT: Be admitted.

9 MR. BANNON: Thank you.

10 Mr. McDonald will ask you some questions now, okay,  
11 Mr. Amit?

12 THE WITNESS: Okay.

13 **CROSS-EXAMINATION**

14 BY MR. McDONALD:

15 Q. Good afternoon, Mr. Amit.

16 A. Good afternoon.

17 Q. It was your responsibility for getting this opinion  
18 done, is that right?

19 A. Yes.

20 Q. And why wasn't that duty handled by the CEO? Why were  
21 you as the chief financial officer in charge of it?

22 A. Well, you know, most of the other vice president were  
23 quite busy in the day-to-day work and it was the chairman  
24 opinion to assign the job to me in a way that I just need to  
25 manage the process to make sure the Brown Raysman people will

1 get all the support and all the necessary information and  
2 everything will be -- you have to put it as the first  
3 priority; in other words, just to manage the process.

4 Q. So you were in charge of making sure they got all the  
5 information that might be relevant to this opinion, right?

6 A. Yes.

7 Q. Because you wanted an opinion you could completely rely  
8 on, right?

9 A. Can you repeat?

10 Q. You wanted an opinion that you could completely rely  
11 upon.

12 A. Yes.

13 Q. And if this opinion said there's infringement risk, you  
14 would have stopped selling the Falcon in the U.S., is that  
15 right?

16 A. This is correct.

17 Q. And you were really looking, if I understood you right,  
18 no risk. That was the message you got loud and clear from  
19 the CEO, that you wanted no risk at all of infringement in  
20 the U.S.

21 A. I wouldn't say no risk at all. I said we don't want --  
22 we cannot afford to take a risk and therefore we need to  
23 obtain independent legal opinion.

24 Q. And you understood now that this opinion was based upon  
25 that information that your folks at Camtek provided to that

1 U.S. lawyer in New York, right?

2 A. This opinion was based on the information that we  
3 provided and the free access that they get them, you know, to  
4 open -- to have an open discussion with our R&D people.

5 Q. And you would agree that the opinion is only going to be  
6 as good as the information provided to the lawyer who gave  
7 the opinion, right?

8 A. The general statement I believe it is, but again, you  
9 know, we -- you know, in order even to minimize this kind of  
10 risk, we took an approach with, hey, everything is open for  
11 you.

12 Q. And did you personally determine whether or not the  
13 Camtek people provided accurate information to the opinion  
14 counsel?

15 A. No. The only thing, I was just going there to the  
16 meeting to make sure -- and observing that Mr. Schafer met  
17 with the head of the physics department and the software  
18 electronic, with all, really, the key people in the R&D.

19 Q. Was anyone in particular responsible for personally  
20 verifying that the New York opinion lawyer got accurate  
21 information for his opinion?

22 A. I believe there was one person which basically  
23 internally, the division, which I would say coordinate and  
24 reported to me in this sense, or two person. One was  
25 Mr. Amir Gilead, which was the division manager, and the

1 second person is Michael Lev, which was basically an IP  
2 manager and the marketing manager of the division at that  
3 time.

4 Q. So it was two people, a Mr. Amir Gilead --

5 A. And Michael Lev, Michael Lev.

6 Q. Okay. So from your standpoint, you didn't personally  
7 take responsibility for ensuring the information the New York  
8 lawyers got was accurate, you assumed the other people took  
9 care of that?

10 A. Yes.

11 Q. Can we turn to Exhibit D 234, please, the opinion  
12 itself?

13 A. D 234.

14 Q. Excuse me. Actually, that's 269?

15 A. 269. Okay.

16 MR. McDONALD: Judge, can we flip over to Todd's  
17 machine there? Thank you. And put the first page up to  
18 start with.

19 Q. So this is the first page of the opinion letter from the  
20 law firm Brown Raysman, right?

21 A. Yes.

22 Q. And that's the firm in New York that you hired to do  
23 this analysis, right?

24 A. Mm-hm.

25 Q. You knew you couldn't rely on your Israel attorney to



1 figure out the U.S. patent law, right?

2 A. Yeah.

3 Q. And this letter was addressed specifically to you,  
4 correct?

5 A. Right.

6 Q. Could you turn then to page 15 of this opinion.

7 A. Page 15.

8 Q. And you see near the bottom there's --

9 A. Okay.

10 Q. Near the bottom of the page there's a little heading  
11 here that the lawyer wrote about meetings with Camtek.

12 A. Yeah.

13 MR. McDONALD: And can we just blow up the last  
14 part of the page there.

15 A. Okay.

16 Q. So there it says: "Meetings with Camtek. The foregoing  
17 description is based on the referenced documents and meetings  
18 with Camtek."

19 A. Mm-hm.

20 Q. And then there's a paragraph that will continue on the  
21 next page. Do you see that here?

22 A. Yeah.

23 Q. It says: "With respect to the documents and meetings,  
24 the Falcon User Guide (Exhibit 3) contains the following  
25 statement on page 5-9: "Preferably, you will select dice

1       that are defect-free."

2       A.     Mm-hm.

3               MR. McDONALD: Now if we can put on page 16 and up  
4       at the top there.

5       Q.     And it continues to say: "From meetings with Camtek, we  
6       understand that the dice are selected at random and are of  
7       unknown quality."

8               Do you see that?

9       A.     Yes.

10      Q.     "Thus, the above statement in the User Guide is  
11     inaccurate and apparently the result of miscommunication to  
12     or misunderstanding of the technical writer of the User  
13     Guide."

14              Do you see that language?

15      A.     Yes.

16      Q.     Now, you understand that this opinion was relying on the  
17     information I just quoted as being accurate, right?

18      A.     Mm-hm.

19      Q.     Can you say yes or no so they can type a word?

20      A.     Yes.

21      Q.     You said, "Mm-hm." I just want to make sure we get a  
22     clear record.

23      A.     Yes.

24      Q.     Thank you. And so you understood that if this  
25     information was incorrect, what the lawyer was stating here,

1     that you could not have that assurance that you could rely on  
2     this opinion, right?

3     A.   No, sir.  This is not my understanding.  This is not my  
4     understanding.  Part of the information that was given to the  
5     -- Brown Raysman was, yes, here is our manual and please note  
6     that we have a mistake here.  This is not the way how we do  
7     the process with the Falcon.  There is a mistake in the  
8     manual.  This is information that we gave him.  It is our  
9     information.

10    Q.   Okay.  And I didn't mean to dispute that, so let's just  
11    make sure we understand each other here.

12                 The lawyer was saying there's this language in the  
13    manual that says preferably select dice that are defect-free,  
14    right?

15    A.   Yes.

16    Q.   But he says:  But your people at Camtek told me that  
17    language is wrong, right?

18    A.   Right.

19    Q.   And you understand that his opinion, the lawyer, the  
20    New York lawyer, opinion lawyer, his opinion is based on that  
21    understanding that the manual is wrong.

22    A.   Yes.

23    Q.   Okay.  So if the manual is actually an accurate  
24    description of what customers using the Falcon would do, you  
25    can't rely on this opinion, can you?

1 A. No, I don't under -- I don't agree with you. You know,  
2 I don't -- it's not I disagree with you per se. I don't  
3 understand you.

4 Q. Well, you do understand that the lawyer is saying: Here  
5 are the facts as I understand them that relate to the Falcon.

6 A. Yeah.

7 Q. And based on the facts as I understand them as the  
8 lawyer, here's my opinion, right?

9 A. Okay.

10 Q. Would you at least agree with me that if his  
11 understanding of the facts is wrong, if, if his understanding  
12 of the facts is wrong, you cannot rely on the opinion?

13 A. No. His understanding was based on what he saw in the  
14 Falcon and how the Falcon was demo'd to him, and how we -- we  
15 pick, you know, the dice in order to create the reference,  
16 and we told him this is the way how the Falcon is operated  
17 regardless the mistake that we have in the manual.

18 Q. All right. Well, I'm going to try to move on and see if  
19 we can communicate in a different way here on that issue.

20 You do understand, though, that that language was  
21 what he was relying on at least in part to reach his opinion,  
22 right, the language in his opinion that says: The manual  
23 says use defect-free, but the Camtek people told me the  
24 manual was wrong. We all agree that he's relying on that in  
25 his opinion, right?

1 A. Yes.

2 Q. Okay. Now, did you personally do anything to verify  
3 yourself that that manual is wrong?

4 A. Well, I ask, you know, the technical people, you know,  
5 about this comment and I believe the explanation -- I thought  
6 the explanation that I got from the technical people as to  
7 the source or the reason for this mistake was satisfactory in  
8 my eye.

9 Q. Did you talk to the person who wrote the wrong language?

10 A. No, I just talked to the division manager and perhaps to  
11 Mr. Michael Lev, to Amir Gilead and Michael Lev.

12 Q. Do you know the name of the person who wrote the wrong  
13 language?

14 A. Yes. I believe these are the technical writer. Her  
15 name was Tory -- I forgot his last name. Tory was the first  
16 name.

17 Q. Okay. And this person Tory who wrote this, does he or  
18 she still work for Camtek?

19 A. No.

20 Q. When did this person -- is it a he or she?

21 A. She.

22 Q. Okay. When did she stop working for Camtek?

23 A. I don't remember. It was probably few months before my  
24 retirement, in other words, sometimes in 2007 or something  
25 like that.

1 Q. So do I understand you right you did not talk to Tory  
2 about why she made this mistake?

3 A. No, not to Tory herself.

4 Q. So did someone tell you that they had given Tory the  
5 wrong information?

6 A. The explanation was on a level of a misunderstanding.  
7 This is exactly the language used and the explanation that I  
8 got is, defect-free die, they probably meant to -- to -- do  
9 not pick up dice which you say on the edge of the wafer,  
10 which is just a partial area of the die, or do not pick die  
11 which has a ink stamp on it, you know, from a previous  
12 process.

13 But, you know, my common sense told me that how can  
14 somebody pick a defect die from a wafer production lot which  
15 need to be inspected and nobody know what is the quality of  
16 this die. You know, it is impossible, as a matter of fact.

17 Q. Help me. Let's take this in some steps here. You had a  
18 lot of information there. I want to make sure I understand  
19 what you're saying here.

20 Are you saying that it's impossible to properly  
21 train the system under certain circumstances; is that what  
22 you're talking about?

23 A. No. No.

24 Q. Okay. When you say something is impossible --

25 A. Impossible to pick up a defect-free die when you don't

1 know the quality of the die or the wafer because you did not  
2 inspect them yet. This is the lot that you want to inspect.

3 Q. All right. Well, but you did mention, though, what was  
4 miscommunicated, if I understand you right --

5 A. Misunderstanding as far as what's the definition of  
6 defect-free. They call it here -- what is the language that  
7 they use? "Select dice which are defect-free."

8 Q. So you're saying how would you know they're defect-free.

9 A. Yes, unless it is clear -- and I mentioned like two  
10 samples, like a die on the edge of a wafer or a die which had  
11 an ink stamp on it, which is, you know, big and clear and you  
12 don't want to pick this die. But other than that you have no  
13 clue what is a good die and what is a bad die.

14 Q. Well, for purposes of using the Falcon.

15 A. And --

16 Q. Let me ask you a question. Let's stick with questions  
17 and answers here, if we could.

18 A. Okay.

19 Q. Is it your understanding that the Falcon can be used by  
20 customers with a wafer that has gone through an electrical  
21 inspection process already?

22 A. Can you repeat, please?

23 Q. Sure. Is it your understanding that the Falcon can be  
24 used on a wafer that has already gone through an electrical  
25 inspection process?

1 A. Yes, okay. I mean, this is what you say, understand it.

2 Q. Okay. And so that wafer could have die on it that  
3 passed the electrical test, right?

4 A. Okay.

5 Q. And die that did not pass the electrical test, right?

6 A. Well, if you say so. I mean, I'm not familiar with the  
7 process. I'm not familiar with the process, so, you know --  
8 I'm not familiar with the process.

9 Q. You're not familiar with what process?

10 A. With the -- with the process in the semiconductor  
11 industry as far as, you know, before electrical test or after  
12 electrical test. I'm not familiar with the process, so I  
13 cannot comment on it.

14 Q. Well, let me stick with what you talked about then. If  
15 I understood you right, you're saying there's die around the  
16 edge of the wafer that obviously would be bad die, is that  
17 right?

18 A. Because they're partially. They don't have the full  
19 geometry of the die.

20 Q. And then some die would have an ink dot on them, right?

21 A. Yes.

22 Q. How do they get the ink dot?

23 A. Probably a previous inspection process.

24 Q. Such as electrical testing, right?

25 A. Maybe yes and maybe no. I don't know. I'm not familiar



1 with the process.

2 Q. Could be electrical testing, it could be some other  
3 testing, but whatever testing it is, the ink dot means it  
4 didn't pass the test, right?

5 A. Yes.

6 Q. And if it doesn't have an ink dot, that means it did  
7 pass whatever the test was, right?

8 A. Perhaps just some of the inspection, you know, which  
9 doesn't mean that this is a good die.

10 Q. But you just mentioned ink dots.

11 A. Yes.

12 Q. And if I understand you right, an ink dot can come into  
13 the Falcon system, a wafer has die with some of the die  
14 having ink dots on them before it even gets into the Falcon  
15 system, right?

16 A. Mm-hm.

17 Q. Can you say yes or no to that, please, just so we can  
18 get a clear record?

19 A. Yes.

20 Q. I appreciate that. I know it's hard to remember --

21 A. Sorry about that. Okay.

22 Q. We'll get through this. Don't worry.

23 So coming into the Falcon, some of those die can  
24 have an ink dot which can indicate they are not good die,  
25 right?

1 A. Okay.

2 Q. Do you agree with that?

3 A. Yes.

4 Q. And is it your understanding that the way the users use  
5 the Falcon machine is, when they're setting up that reference  
6 die, the model, they'll avoid using the die with the ink  
7 dots?

8 A. Yes.

9 Q. So the user will use die that are known to be good  
10 enough to have passed some prior testing in that case,  
11 correct?

12 A. Or you can say they should use a randomly picked die  
13 with an exception that they don't have an ink spot on them,  
14 okay? What can I tell you? I mean, you know, I'm really not  
15 familiar with the process. I said in my eyes from the view  
16 of, let's say, a CFO, this was a satisfactory explanation for  
17 me.

18 (Pause)

19 Q. All right. I just did a little sketch here and see if  
20 we can put in a picture here what we've been saying in words,  
21 all right?

22 A. Okay.

23 MR. McDONALD: Your Honor, may I use the ELMO here?

24 Q. All right. You might have a little trouble reading my  
25 handwriting here, this was kind of on the fly, so I'm going

1 to walk you through this.

2 A. Okay.

3 Q. I tried to draw something round here, at least my  
4 version of round, representing a wafer, okay? Do you see  
5 that, a round circle?

6 A. Okay.

7 Q. Then up at the top you see there's something that's not  
8 really a square, but kind of close to a square, with a big  
9 dot in it?

10 A. Mm-hm.

11 Q. All right. Then I've got something that I wrote there  
12 that says "Die with dot: Do not use," right?

13 A. This is what you wrote.

14 Q. Okay. And then the other thing I wrote is another  
15 square with no dot on it, right?

16 A. Yeah.

17 Q. With a little line: "Die with no dot: Okay to use."  
18 Do you see that?

19 A. Okay.

20 Q. All right. So I'm hoping I've depicted accurately what  
21 we've just been talking about here, that coming into the  
22 Falcon before it creates that training, there'll be die that  
23 have an ink dot that you don't use to create the model,  
24 another die with no dot that may be used to create the model,  
25 right?

1 A. Okay.

2 Q. Now, is it your understanding and was it your  
3 understanding at the time of this opinion that the operator  
4 would be involved in selecting the die that don't have ink  
5 dots on them to create the model?

6 A. Possible, yeah.

7 Q. Isn't that probable? Would you go with me that that's  
8 probable?

9 A. Probable. Probable.

10 Q. All right. So, is it true that in the system as you  
11 understood it at the time you got this opinion from the  
12 New York attorney, that in fact customers creating the model  
13 would know that the die may not be defect-free, but they'd be  
14 good enough to have passed that ink-dot test and good enough  
15 to make a good model?

16 A. I -- I don't feel really that I can, you know, discuss  
17 all these kind of technical details with you. If you allow  
18 me, please, to go back to why I was satisfied.

19 I say that with the explanation that I got, that  
20 maybe Tory intended to write when she said defect-free to be  
21 specific. For me as the CFO of the company -- I have just a  
22 very general understanding -- this seems to be satisfactory  
23 explanation. That's it. I mean, now you try to ask me about  
24 all the detail, the technical and what we do and whether it  
25 was after electrical test or -- I don't think that I'm the

1 right person to discuss it. You know, I don't have the  
2 knowledge to discuss it with you.

3 Q. So in terms of the information given to the lawyer, you  
4 don't really feel like you're the right person to speak as  
5 the corporate representative of Camtek here today?

6 A. No, no, I do, but this is as I was asking -- the aid  
7 first of all, the aid of our people in the division. They're  
8 the technical people and I ask them to comment on any  
9 technical information that's in the opinion and to make sure  
10 that everything in the opinion is in line with the way how  
11 we're working. And the same I approach it, you know, with  
12 our lawyer, and I believe this is what I had to do.

13 Q. And isn't it true that during the process of this  
14 lawsuit before it came to this trial this last couple of  
15 weeks, you in fact were designated as the person to speak on  
16 behalf of Camtek about the opinion you got from the New York  
17 lawyer and the information provided to that lawyer that led  
18 to the opinion, right?

19 A. Yes, but more in the general terms, not in the  
20 technical. I explain to your lawyer during the deposition,  
21 you know, I made it clearly. My role was to manage the  
22 process, to make sure that Brown Raysman will get all the  
23 necessary information in the most open way in order for them  
24 to prepare an independent legal opinion.

25 Q. But I do understand that you had indicated that as part

1 of your responsibilities here you at least did some checking  
2 on why is it that that technical writer got this wrong, is  
3 that fair?

4 A. Look --

5 Q. Is that fair or not?

6 A. Yeah. Yeah. Yeah.

7 Q. I didn't think I was going too far out on a limb there,  
8 right?

9 A. And I still can understand something and ask some  
10 questions, okay, and this is what I did.

11 Q. All right. That sounds good.

12 A. Thank you.

13 Q. And so your understanding is that writer got it wrong  
14 when they said use, in effect, perfect or defect-free die to  
15 create this model, because they didn't have to be perfect to  
16 use the model --

17 A. Okay.

18 Q. -- is that fair?

19 A. Okay.

20 MR. McDONALD: Todd, I don't know if you can do  
21 this very quickly, but -- we'll get it switched in a second  
22 here. You have to tell me you can do this first.

23 Can you pull up the definition of a known good  
24 quality die? Can you nod yes or no? All right.

25 Judge, I'm going to turn off the ELMO here.

1                   The one that has previously been used. Yes.

2       BY MR. McDONALD:

3       Q.    Do you see up on the screen, Mr. Amit, there's the  
4       definition of a term here: "Plurality of known good quality  
5       wafers or multiple known good wafers" that says: "Multiple  
6       wafers that are recognized individually or as a whole to be  
7       sufficiently free of defects for training purposes (e.g., " --  
8       or for example -- "die that have been inspected, tested or  
9       otherwise reviewed prior to or during training)."

10           Do you see that definition here?

11       A.    Yeah, I can see that.

12       Q.    Okay. If I understand you right, the Falcon, to create  
13       a training model, uses die that may have been inspected  
14       through that ink-dot process and known to at least be  
15       sufficiently free of defects for training purposes even if  
16       they're not totally defect-free, is that fair?

17       A.    Again, I feel that I'm losing you. I feel that I'm  
18       losing you because this is really not the area of my  
19       expertise or my responsibility. I tell you, my role in the  
20       preparation of this opinion was to manage the process. I  
21       really cannot discuss it with you.

22       Q.    Okay. So you're going to say, "I can't answer that  
23       question"; have I got you right?

24       A.    I cannot answer the question.

25       Q.    And you showed up today to speak about that process that

1 Camtek went through to meticulously get this U.S. lawyer to  
2 do this opinion to make sure you were doing everything right,  
3 but despite that you're saying, "I can't answer that  
4 question"; have I got you right?

5 A. There are other people from the company that can answer.  
6 I cannot answer questions which has to do with technicality,  
7 with technical details, because I'm not qualified.

8 Q. So you think these are technicalities?

9 A. I believe so. I believe so.

10 Q. Isn't it true that that language about using defect-free  
11 die was actually in several versions of Camtek user guides  
12 that had been in existence in September of '05 at the time  
13 you got this opinion?

14 A. Again, this is something that I'm not aware of. The  
15 only thing -- you know, if I didn't read the opinion, I  
16 wouldn't even know about, you know, this mistake, this  
17 specific mistake. This typically will not come -- a manual  
18 or a version of a manual, if there is a mistake on the  
19 manual, it will never come to the desk of a CFO.

20 Q. But what if it's a mistake that is a mistake that your  
21 New York opinion counsel relied on to give your company an  
22 opinion that said they did not infringe the August patent  
23 involved in this lawsuit? Wouldn't that be something that  
24 would come across your desk in that situation?

25 A. No, I didn't understand your last question, please. Can



1       you repeat, please, in simple language.

2       Q.     Well, sure. I'll try. I'm a lawyer, so that's going to  
3       be a little tough, but we'll see if we can get there.

4               I think you said this is the sort of issue -- an  
5       error in a manual is typically not the sort of issue that  
6       would come across your desk as a CFO.

7       A.     No. What I said, if there are errors in the manual, in  
8       any other literature, typically it will not come to my desk  
9       as the CFO. This is what I say.

10      Q.     And I can appreciate that typically you may not see  
11      what's on a certain page of a manual, but in the situation we  
12      have here, that very error in that manual is something that  
13      your lawyer said he was told about and that he relied upon to  
14      tell you that you wouldn't infringe the August patent, right?

15      A.     No. It is not the language of the error. As I mention  
16      again, one of the most important here is the way how we  
17      operate the machine, and the way how we operate the machine  
18      is contradiction to this statement. And this is what we came  
19      and we said: "Listen, regardless what is written in the  
20      manual, this is not the way how we operate the machine. This  
21      was a mistake."

22      Q.     Okay. So you're saying -- your understanding as the  
23      witness speaking on behalf of Camtek, you're comfortable  
24      telling me today that that manual is inconsistent with how  
25      the Falcon was actually operated at the time of the opinion,

1 correct?

2 A. These specific two words of defect-free. This is the  
3 part which is not like the way we work on the Falcon.

4 Q. How about the language that the attorney was relying on,  
5 that in fact unknown quality die were used for training? Was  
6 the Falcon in fact used that way?

7 A. To the best of my knowledge, yes and no. They're using  
8 an unknown quality dice because this was before the  
9 inspection, so nobody know what is the quality. This is my  
10 common sense.

11 Q. Well, didn't your common sense tell you, though, that if  
12 by the time the wafer got to the Falcon machine, if it had  
13 already been tested and had some die that were marked with  
14 that ink dot, meaning they were bad, you wouldn't use those  
15 for a model?

16 A. You take me back to the process of the semiconductor  
17 industry which I'm not familiar with and don't feel  
18 comfortable to discuss it with you. I mean, you have many of  
19 our technical people. You can discuss it with them. I'm not  
20 the right person.

21 Q. Isn't it true, Mr. Amit, that at the same time your  
22 company was giving information to your New York opinion  
23 counsel in the fall of '05, Camtek was training customers to  
24 use good die to create the model?

25 A. This is not that I'm aware or know about it.

1 Q. You don't know one way or the other?

2 A. No.

3 Q. Well, how long have you been here for the trial these  
4 last few days?

5 A. I'm here since Monday. This was the first day.

6 Q. Okay.

7 A. And believe it or not, I could hardly hear most of the  
8 questions, because, you know, I have some hearing problem and  
9 you guys were talking with your back to me and, you know, I  
10 could not hear all the questions.

11 Q. Okay. Were you here for Elmer Gardiola?

12 A. No.

13 Q. Okay. Were you here for the testimony we had read in of  
14 Mr. Bernard?

15 A. No.

16 Q. Okay. Well, let's -- so is it your testimony you don't  
17 know one way or the other whether or not Mr. Gardiola  
18 testified in court in the last few days right here in this  
19 trial that in September or October of 2005, he was trained by  
20 Camtek people to use good die to make models?

21 A. No, I don't know.

22 Q. Are you aware of any efforts Camtek went through before,  
23 during or after it got that opinion, to tell any customers  
24 who got that user guide that the guide was wrong?

25 A. I'm not aware that any action was --

1 Q. Okay. Do you know whether or not any customers got the  
2 user guide that had the same language that your people told  
3 the lawyer was wrong?

4 A. Probably, yes. You know, if this language was in the  
5 manual, I believe that some of the customer, perhaps most of  
6 the customer had this manual. I mean, this is again common  
7 sense. This makes sense to me, not that I know that this  
8 specific manual went to a specific customer. It simply makes  
9 sense to me.

10 Q. Well, we can put a specific example of one up there.

11 MR. McDONALD: If we could pull up Plaintiff's  
12 Exhibit 88, please.

13 Q. Do you see the first page of the exhibit up on the  
14 screen, Mr. Amit?

15 A. Yeah.

16 Q. That's some version of a Falcon user guide on the first  
17 page. Does that look familiar?

18 A. I see it right now. It's not a document that I ever  
19 read.

20 Q. Okay. You haven't read any of the user guides?

21 A. No.

22 MR. McDONALD: At least if we can blow up in the  
23 lower left corner the little print that indicates the date.

24 A. Okay.

25 MR. McDONALD: That's just the document number.

1 I'm sorry. I think it's the second page that has the  
2 copyright date on it.

3 Q. This looks like it's got a copyright date of 2004 there.  
4 Do you see that on page 2?

5 A. Mm-hm.

6 Q. So you would agree that if this in fact existed in 2004,  
7 this would predate when you got the opinion?

8 A. Most likely.

9 Q. Now, if we turn to page 56 of this document --

10 MR. McDONALD: Can we blow up in the lower right  
11 corner the number of the page, lower right corner.

12 Q. This is a Delphi document. Do you know who Delphi is?

13 A. I think it's -- I think it's one of our customers in  
14 United States, yeah.

15 Q. Is that in Kokomo? Does that ring a bell?

16 A. No, no, no, no. I heard this name. You know, for me,  
17 the CFO, this is a row on the revenue list.

18 Q. All right. No zip codes with that.

19 A. No zip code, right.

20 MR. McDONALD: So could we blow up the first  
21 paragraph with the heading "Cleaning the Reference Die."

22 A. Okay.

23 Q. Now, this has that sentence that we've been talking  
24 about, right, in the middle of the paragraph where it says  
25 "Preferably"?

1 MR. McDONALD: If we could highlight that.

2 Q. "Preferably, you will select dice that are defect-free."

3 A. Okay.

4 Q. So it does look here like Delphi, anyway, was a customer  
5 that got a copy of this wrong manual, right? You agree with  
6 that, that it appears to be the case?

7 A. Well, what I have to agree or not agree here, you know  
8 what I mean? You show me documents with the same statement  
9 and you say that this document went to Delphi. Fine. Okay.

10 Q. If I understand you right, these customers are paying  
11 you hundreds of thousands of dollars if not a million to buy  
12 these machines, right? You're the finance guy, so I think  
13 you know that one, right?

14 A. Okay. Okay. Okay. I don't remember exactly what was  
15 the selling price, but, you know --

16 Q. Well, can you give me a ballpark idea?

17 A. Pardon.

18 Q. As the chief financial officer, do you have a --

19 A. It could be anywhere between a 500,000 to \$700,000  
20 machine.

21 Q. And is it your understanding that Camtek is under a  
22 contractual obligation to these customers who pay them all  
23 that money to train them and give them training materials?

24 A. Yes.

25 Q. But yet you have no information as you sit here today

1       that any of the customers were told that those guides were  
2       wrong. Have I got that right?

3       A.    No. Can you repeat, please?

4       Q.    Yes. As you sit here today, are you aware of a single  
5       customer who got a manual like the one up on your screen here  
6       with this supposedly wrong information, are you aware of a  
7       single customer who got that wrong information in their guide  
8       that was told this is wrong, this is a mistake, this is an  
9       error?

10      A.    I'm not aware if someone told me that this was a mistake  
11      or not.

12      Q.    So you told the lawyer it was a mistake, but you didn't  
13      tell those customers that had paid you hundreds of thousands  
14      of dollars and asked to get training materials from you --

15      A.    You ask --

16      Q.    Please let me finish the question. I guess I'll have to  
17      start over.

18                So if I've got this right, you told the lawyers,  
19      the lawyer in New York in September of '05, that that book is  
20      wrong, but you didn't tell a single customer that you know of  
21      that the manual is wrong.

22      A.    You ask me personally?

23      Q.    I'm asking about your personal knowledge?

24      A.    Okay. No. It's not -- I personally did not tell the  
25      lawyer that there is a mistake. This is our team. Our

1 people made the statement. And I personally didn't met  
2 Delphi or any other customer to tell them that this is wrong  
3 or bad. So I don't know. It could be. You have to address  
4 this question to our field people and ask them whether they  
5 told or whether they notified the customer about this mistake  
6 or not. I'm not the person to answer it.

7 Q. You were in charge of making sure the lawyers got all  
8 the information they needed, though, right?

9 A. Right.

10 Q. Have you ever heard the expression "garbage in, garbage  
11 out"?

12 A. No. Yeah. In general like a slogan or like, you know,  
13 kind of a -- yeah.

14 Q. What is your understanding as to what that means?

15 A. Something which if your input is not good, then the  
16 output is also not good, okay?

17 Q. Okay.

18 MR. McDONALD: Your Honor, I'm at a good break  
19 point.

20 THE COURT: Yeah, let's stop here.

21 Kristine, what time are we starting up tomorrow?

22 THE COURT: Nine o'clock. We're starting up at  
23 9 o'clock tomorrow.

24 All rise. Have a good evening.

25 (Jury excused)



1 THE COURT: I'll see you tomorrow about 8:45 --

2 MR. BANNON: Thirteenth floor.

3 THE COURT: -- to argue the issues.

4 MR. McDONALD: Have a good evening.

5 (Proceedings concluded for the day at 4:50 p.m.)

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**I N D E X**

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**C E R T I F I C A T E**

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/s/ Timothy J. Willette

/s/ Lori A. Simpson

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**TIMOTHY J. WILLETTE, RDR, CRR    LORI A. SIMPSON, RMR, CRR**

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